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th Congress, 1st Session. } SENATE. { Document No. 161.

CORRESPONDENCE AND OTHER PAPERS

RELATING TO

THE PROPOSED INTEROCEANIC SHIP CANAL,

BEING

A REPRINT OF AN EXECUTIVE DOCUMENT OF THE SPECIAL SESSION OF MARCH 4, 1897, AND OF DOCUMENT NO. 194 OF THE FORTY-SEVENTH CONGRESS, FIRST SESSION.

February 8, 1900.—Ordered to be printed.

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MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

COMMUNICATING

In answer to a resolution of the 7th instant, a report of the Secretary of State, with correspondence and documents connected with the treaty concluded at London between the United States and Great Britain, the 7th [17th] day of October, 1856.

To the Senate of the United States:

I transmit a report from the Secretary of State, with accompanying papers, in answer to the resolution of the Senate of the 7th instant.

FRANKLIN PIERCE.

WASHINGTON, *January 12, 1857.*

DEPARTMENT OF STATE,
Washington, January 12, 1857.

The Secretary of State, to whom was referred the resolution of the Senate of the 7th instant, requesting the President, if in his opinion not incompatible with the public interest, to communicate to that body, in executive session, "copies of the correspondence and documents connected with the treaty concluded at London, between the United States and Great Britain, on the 7th [17th] day of October, 1856, and communicated to the Senate with his message of the 10th of December, 1856," has the honor to lay before the President the accompanying papers.

All of which is respectfully submitted.

W. L. MARCY.

To the PRESIDENT OF THE UNITED STATES.

List of accompanying papers.

Mr. Marcy to Mr. Dallas, 24th May, 1856. (Copy.)
The same to the same, 26th July, 1856. (Copy.)
The same to the same, 28th July, 1856. (Copy.)

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The same to the same, 26th September, 1856. (Copy.)
The same to the same, 26th September, 1856. (Copy.)
Mr. Dallas to Mr. Marcy, 1st May, 1856. (Extract.)
The same to the same, 9th May, 1856. (Extract.)
The same to the same, 23d May, 1856. (Extract.)
The same to the same, 27th May, 1856. (Extracts.)
The same to the same, 30th May, 1856. (Extract.)
The same to the same, (with enclosures,) 3d June, 1856. (Extract.)
The same to the same, 10th June, 1856. (Extract.)
The same to the same, 13th June, 1856. (Extracts.)
The same to the same, 20th June, 1856. (Extract.)
The same to the same, (with an enclosure,) 27th June, 1856. (Extract.)
The same to the same, (with enclosures,) 1st July, 1856. (Copy.)
The same to the same, (with enclosures,) 11th July, 1856. (Extracts.)
The same to the same, (with enclosures,) 22d July, 1856. (Extract.)
The same to the same, 31st July, 1856. (Extract.)
The same to the same, (with enclosures,) 12th August, 1856. (Extracts.)
The same to the same, 15th August, 1856. (Extract.)
The same to the same, 22d August, 1856. (Extract.)
The same to the same, (with an enclosure,) 29th August, 1856. (Extract.)
The same to the same, 10th October, 1856. (Extract.)
The same to the same, 17th October, 1856. (Copy.)

Mr. Marcy to Mr. Dallas.

[No. 13.] DEPARTMENT OF STATE,
Washington, May 24, 1856.

SIR: I am directed by the President to address you on the subject of the difference of opinion between the British government and that of the United States regarding the construction and effect of the convention of April 19, 1850, and the subject of Central America generally, and to state to you the views which the President entertains of that question, as it now stands, in order that you may communicate the same to the Earl of Clarendon, her Britannic Majesty's principal secretary of state for foreign affairs.

You are aware that there has been no direct communication between the two governments on the main subject since the letter of your predecessor, Mr. Buchanan, to the Earl of Clarendon, dated September 11, 1855, his lordship's reply of the 28th of the same September, and a brief rejoinder by Mr. Buchanan on the 4th of the following October.

In his letter of the 11th of September, Mr. Buchanan, briefly recapitulating the conclusions at which the President had arrived on the whole case, and which had been fully explained to the British government in his previous despatches, reminded Lord Clarendon that more than a year had already elapsed without any new step being taken by the United States in the discussion, from unwillingness to press the subject while the attention of her Majesty's government was engrossed by the war with Russia; and he proceeded to say that the President had directed him, before retiring from his mission, as he was

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then about to do, to request from the British government a statement of the positions which it had determined to maintain, more especially in regard to the Bay Islands, the Belize settlement, and the Mosquito protectorate.

To this communication the Earl of Clarendon replied, stating as the final opinion of her Majesty's government, that "the convention of April 19, 1850, was merely prospective in its operation, and did not in any way interfere with the state of things existing at the time of its conclusion." He repeats this idea afterwards in other forms of expression, saying, in one place, that "the British government consider that the design of the contracting parties was not to disturb any state of things then existing;" and in another place, that while the British government have no wish "to extend the limits of their possessions or the sphere of their influence" in Central America, they "are not prepared to contract either the one or the other, in pursuance of the interpretation of a convention, to which interpretation they cannot subscribe."

Here, with exception of the brief note from Mr. Buchanan to Lord Clarendon of the 4th of October, 1855, and that upon a single point only, the correspondence touching the general question has remained suspended.

It will thus be perceived, that in his closing despatch the Earl of Clarendon desists from all further discussion of the main objects of controversy which had previously occupied the attention of the two governments, and rests the case upon the single position, then at length definitely assumed and expressly announced, of a particular hypothesis touching the construction of the convention.

The President could not but receive this announcement with equal surprise and regret. He would, indeed, have been constrained to regard it as an abrupt and complete termination of all correspondence on the subject between the two governments, and as imposing on this government the painful duty of solemnly declaring that the convention had now ceased to be obligatory on the United States, but for the following expressions in the Earl of Clarendon's despatch:

"The British government share the conviction of the President of the United States that the interests of the two countries and their mutual desire to maintain existing friendly relations will alike inspire each party with a conciliatory spirit, and enable them to overcome all obstacles to a satisfactory adjustment of Central American questions. The British government see no reason why it should be otherwise."

This language on the part of her Majesty's principal secretary for foreign affairs did have the effect of preventing the President from dismissing all hope of an amicable adjustment of the serious misunderstanding which had grown up between the two governments. He would have been better satisfied if, in expressing the conviction that all obstacles to a satisfactory adjustment of the controversy might, with conciliatory spirit on both sides, be overcome, his lordship had been pleased to indicate the means which, in his judgment, were calculated to produce so desirable a consummation. For want of this the President has been left to conjecture the precise idea of her Majesty's government. He cannot be certain that his conjecture concerning it is well founded; but he is induced, by certain collateral incidents which have occurred, to infer that it was the arbitration by a third power of the difference between the two governments in relation to Central America.

It appears by the letter of Mr. Buchanan to this department of

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February 8, 1856, that on a recent occasion Lord Clarendon had stated in the House of Lords that he had offered to refer the whole question to the arbitration of any third power, and that the offer had been renewed, in consequence of which statement Mr. Buchanan, not being aware that any such offer had been formerly made by the British government, had an interview with the Earl of Clarendon for the purpose of explanation. In that interview, Lord Clarendon stated that the original offer of which he had spoken in the House of Lords referred to expressions he had used in conversation with Mr. Buchanan, at an early stage of the discussion on the subject of Central America, and that what he had said of a repetition of the offer was in allusion to a despatch which he had addressed to Mr. Crampton, the British minister at Washington, and which Mr. Crampton had communicated to this department, and he even proceeded to recount the answer which, on that occasion, it was alleged Mr. Crampton had received from me.

In relation to this important matter, as it has since been fully manifested, there was misconception on both sides. In the first place, although the note to Mr. Crampton had been written so far back as the 10th of November, 1855, and in it Mr. Crampton had been expressly "instructed" to communicate it to this department, he had neglected to do so, and it was not until a late hour in the evening of February 27, 1856, and in consequence of discussions in the Senate of the United States on the subject, that Mr. Crampton executed his instructions in this respect, and made communication of Lord Clarendon's note of the previous November.

In the second place, it had not been understood, either by Mr. Buchanan or by his government, that the suggestions of arbitration which Lord Clarendon had made in conversation with Mr Buchanan were intended by the former as a formal proposition to that effect on the part of her Majesty's government. If it had been so understood, the proposition would have received at once the respectful consideration of the President.

It would be superfluous now to dwell on the regret which the President entertains that a proposition of this nature, which her Majesty's government intended as a final one, was not presented at the commencement, in such a shape as to have attracted to, and fixed upon it, the attention of this government.

The President has never ceased to be sincerely solicitous to preserve unimpaired the friendly relations of the two countries, and in that spirit, passing over all which there is of apparent informality in the offer of the British government, and assuming the late communication by Mr. Cramption of Lord Clarendon's note of the 10th of November as a definite proposition, he instructs me to make the present response to that proposition.

At the very threshold is the question, what it is which shall be submitted to arbitration. Lord Clarendon, in his letter to Mr. Crampton of the 10th of November, seems to assume that the difference between the two countries is merely of the *interpretation* of the convention of April 19, 1850; but that is not so understood by this government.

If, indeed, it should be determined in any way that the American construction of that treaty is correct, which is, that whatever may have been the state of things previous to its date, yet, after that, neither the United States nor Great Britain is to hold any possessions in Central America; that, when the two governments agreed that "neither will ever occupy, or fortify, or colonize, or assume, or exer-

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cise any dominion over Nicaragua, Costa Rica, the Musquito coast, or any part of Central America," the stipulation comprehends, as to the acts enumerated, prohibition of their continuance as well as their initiation, without which there could be no effective neutralization of the American isthmus; if, I say, such were the agreed or settled interpretation of the treaty, then, indeed, such determination would conclude all existing difference, and settle it in accordance with the views entertained by the United States.

But, on the other hand, it is not easy to see how the adverse construction, if it were adopted by an arbiter, could terminate the difference. Lord Clarendon conceives that the treaty "was merely prospective in its operation." So it undoubtedly was in one sense—that is, its engagements only took effect at the time of its execution, and did but apply to all future time.

But when he goes on to infer that the treaty "did not in any way interfere with the state of things existing at the time of its conclusion," he not only assumes a consequence which does not flow from the premises, but he also assumes a state of facts which is controverted by this government, and the determination of which cannot derive the least aid from the interpretation which he claims for the convention.

The Earl of Clarendon here assumes, without distinctly asserting it, that, at the date of the treaty, Great Britain had "possessions" in Central America. The existence of such possessions, or, as he otherwise expresses it, the assumed fact of their being "portions of territory occupied" by Great Britain in Central America, would appear to be what he more than once speaks of, as "the state of things existing at the time of its conclusion." But this government does not understand that, at the date of the treaty, Great Britain had any possessions or occupied any territory in Central America, unless the British establishment at the Belize, with its dependencies, as the same are defined by her treaties with Spain, are to be considered as British possessions or territory in Central America. That is the only possible construction of the declarations exchanged between the then Secretary of State, Mr. Clayton, and the British minister, Sir Henry Bulwer, at the time of exchanging the ratification of the convention.

Independently of that cogent consideration, this government supposes that, as a matter of mere fact, "the state of things existing" in this respect at the time of the conclusion of the convention was a thing of indisputable notoriety. I will not do her Majesty's government the injustice of presuming that when the Earl of Clarendon speaks of "possessions" of Great Britain in that quarter, or of "portions of territory occupied by it," he intends to be understood as meaning anything but *rightful* possessions and *rightful* occupation—that is, possessions and occupation based upon the principles and conformed to the public law which govern the international relations of the Christian States of Europe and America.

Had Great Britain at that time any such possessions or occupation in Central America? If so, it must have consisted either in her relation to the Mosquito Indians, or to the Belize, or to the Bay Islands.

First, as to the Mosquito coast, it is not understood that Great Britain now lays claim to any "possessions" or any "territory" there. All she is supposed to claim is the right to "*protect*" the Mosquito Indians. It cannot be alleged by her that those Indians constitute, or are competent to constitute, an independent State, admissible as such into the family of sovereign powers. Nor is it pretended by Great Britain that in the name or on behalf of those Indians she her-

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self can, without contravention of the treaty, assume or exercise political sovereignty in any part of the Mosquito coast. Her Majesty's government considers itself under obligations of honor to protect the persons of those Indians, nothing more, and declares that it is ready and desirous to be relieved of that duty in any manner which shall honorably assure the future condition of those Indians. Without entering here into discussion of the question whether the convictions of duty thus entertained by the British government are well or ill-founded, it seems sufficient to say that there is nothing in that branch of the subject which merits the solemnity of an arbitration by some third power, or which ought to be regarded as incapable of being settled at any moment by direct intercourse between the respective governments of Great Britain and the United States.

Nor is it apprehended that her Majesty's government is disposed to claim possession, either in her own name directly, or in that of the Mosquito protectorate, of the port of San Juan de Nicaragua. It cannot but be admitted that that port was an old possession of Spain, her right to which was as indisputable as to Vera Cruz or Panama; that she had a port of entry and a fort, at or near that place, so long as she retained the sovereignty of Central America; and that then her rights of sovereignty there, and of territorial possession, passed to the republic of Central America. It is true that, at a subsequent period, and shortly before the date of the treaty now in question, a British force landed at San Juan, expelled the authorities of the State of Nicaragua which then held possession of it, and retained it for a while, as against that State, in the name of the Mosquito Indians. It is true Great Britain afterwards relinquished the place to the so-called people of Greytown, but the original taking of it was her act. That is, she, in the words of Lord Clarendon, placed "a people under her protection in possession" of San Juan. A protectorship so exercised, and in the name of such persons as the Mosquito Indians, would, it is plain, amount to practical sovereignty. If admissible, under the name of protectorship, for one of the contracting parties to the convention, it would be equally so for the other; and the United States might be impelled, for controlling reasons, to undertake a counter protectorship of Indians or other persons in Central America. It is not supposed that Great Britain desires to enter into any such line of policy of conflicting protectorships in that quarter, or contends for any construction of the treaty leading to such consequences, and, of course, no difficulty between the two governments is apprehended on this point, any more than in regard to the general relation of the treaty to the Mosquito Indians.

Second, as to the Belize, it being conceded that, in pursuance of the explanations interchanged between Sir Henry Bulwer and Mr. Clayton, Great Britian is not precluded by any stipulation with the United States from continuing to exercise, at that establishment, all the rights which she acquired from Spain; it would seem, also, that there is nothing in that part of the subject which it becomes the two governments to say to the world that they cannot settle by themselves. For, although it is common in English books of geography and others to give to the Belize the appellation of British Honduras, still it is too well known to admit of dispute, that the Belize is not, and never was, any part of Honduras, and her Majesty's government will not, it is assumed as a matter of course, found on a mere name any pretensions of extended territory in that quarter, to the prejudice of the territorial integrity of the republic of Honduras.

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Finally, there remains the question of the Bay Islands, as to which there is more of controversy, at least in appearance.

It is due to perfect frankness to say, that the act of her Majesty's government establishing so late as the year 1852, and in apparent contradiction to the express letter of the convention of 1850, a colony at the Bay Islands, has left a disagreeable impression on the minds of the government and the people of the United States.

Possessing, as Great Britain does, numerous colonial establishments in all parts of the world, many of them in the West Indies, it has not been readily seen what inducements of interest she can have had to establish a new colony under the peculiar circumstances of the time in the insignificant territory of the Bay Islands.

Nor, on looking back beyond the fact of her Majesty's warrant establishing the colony of the Bay Islands, and considering the state of things existing in that quarter at the date of the convention of 1850, does this government well see on what ground it can be maintained that Great Britain, at that time, had possession of the Bay Islands, which could be deemed rightful, either as respects her engagements with the United States, or the territorial sovereignty of the republic of Honduras.

I do not understand the Earl of Clarendon positively to assert, that the Bay Islands are dependencies of the British settlement at the Belize. He indicates, to be sure, an inclination on the part of the British government to maintain such a claim, but he concedes, at the same time, that it is a "debateable question."

The President does not permit himself for a moment to entertain the idea that the Earl of Clarendon will insist upon any claim of right in Central America, incompatible with the most sacred respect for all stipulations of treaty, as understood by her Majesty's government. Of course he looks to see what are the rightful sources of British title to the Bay Islands suggested by the Earl of Clarendon. He finds them in the "statement" from the Foreign Office of May 2, 1854, as communicated to Mr. Buchanan, and by him transmitted to this department.

Her Majesty's government admits, in that paper, that Ruatan was claimed, and militarily occupied by the former republic of Central America, as successor to the rights of Spain; but asserts, at the same time, adverse British claim manifested by acts of authority, military and civil, and by actual possession.

Occasional acts of military authority by the captains of British ships-of-war, or of civil authority by the superintendent of the Belize, are insufficient, it is obvious, to determine a claim of title as against the counter claim of the republic of Central America or the State of Honduras. No relinquishment of title by the latter is alleged, except in certain declarations reported to have been made by the Central American commandant of Truxillo, who, whatever he may have said, could have no power to cede away the territory of Honduras.

The occupation of Ruatan by British subjects, as its origin and character are described in the "statement," presents none of the conditions of rightful possession. Its language on that point is: "Ruatan has been of late years, without any instigation on the part of her Majesty's government, spontaneously occupied by British subjects." It is not presumable that the spontaneous occupation of Ruatan by British subjects, without instigation on the part of her Majesty's government, that is, an act of mere invasion by unauthorized private persons, will be perseveringly insisted upon by the Earl of Clarendon as the foundation of claim by Great Britain to the sovereignty or even the rightful possession of the Bay Islands.

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It cannot have escaped the attention of her Majesty's government that the political condition of the Belize, as fixed by treaties, is not itself one of territorial sovereignty, and therefore Great Britain never could have acquired in right of the Belize, and as assumed dependencies thereof, the territorial sovereignty of the Bay Islands.

In a word, this government believes that the Bay Islands belong to the State of Honduras, and that, therefore, the occupation of them, and still more their colonization by Great Britain, are contrary to the tenor of her treaty with the United States as being the occupation and colonization of a part of Central America.

But the British government thinks differently, and upon the question whether the Bay Islands are subject to occupation and colonization by Great Britain, notwithstanding her treaty with the United States, the two governments are at issue.

Upon this retrospect of the several points of difference between the two governments, the President is not able to perceive that any useful result would ensue to either, from calling on a third power to say whether the convention is or is not prospective in its operation, in the sense of that idea as expressed by her Majesty's government; for, if that question should by any possibility happen to be resolved in favor of Great Britain, all the substantial points of difference between the two countries would remain untouched, as being wholly independent of that question of construction. The dispute would still exist as to what rightful possessions, at the date of the convention, Great Britain actually had in Central America.

And if it is now contended by the British government that, in the name of the Mosquito Indians, Great Britain may take, with military force, and hold, San Juan de Nicaragua, or any other point in Central America, such a pretension would be so totally irreconcilable with all idea of the independence or neutrality of the isthmus, as to render the convention worse than nugatory to the United States. Instead of submitting to arbitration a pretension involving such consequences, or in any other way consenting to restore effect to the treaty with such possible construction, it would, in the judgment of the President, be his duty to propose its annulment, so as to release the United States from obligations not attended by any benefits, and which obligations, thus unattended, the United States did not intentionally incur, they having entered into the treaty only upon the supposition that absolute reciprocity of restriction was incurred by Great Britain.

I repeat, if the treaty could, by any possibility whatever, have the construction of leaving Great Britain in the possession or military control of the Atlantic coast of Central America, in the name of the Mosquito Indians, and with power to colonize insular positions commanding it, on the ground of their having been "spontaneously occupied by British subjects," while the United States are restrained from all such rights of control or acquisition, that, in the estimation of the President, would be to deprive the treaty of moral force, both because it would thus cease to have reciprocal effect, and because the United States did not intentionally enter into any such engagement; and if such were a possible construction of the letter of the treaty, it would be incumbent on the President to consider whether it would not then become the duty of the United States to seek for the most honorable means of being discharged from such obligations, and render themselves perfectly free to re-establish their proper relation as an American power to the transit routes of the American isthmus and the general independence of America.

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In fine, the President cannot consent to any act which implies the existence of possible doubt on this point. The convention of 1850, construed in the sense above supposed, would not be the treaty into which the United States entered. Nor can he do anything which could be taken to admit, either directly or impliedly, that there is question in his mind relative to the true construction of that convention. And he feels bound to take care that, in entertaining the present proposition of arbitration, he shall not be understood as actuated by the slightest feeling of distrust regarding the treaty rights of the United States.

But the President is not prepared to say that some of the questions of facts concerning which the two governments differ, may not be conveniently determined by arbitration or by some analogous method.

Of this class of objects of inquiry is the question, what are the rightful limits of the establishment at the Belize on the side of the State of Honduras; the question whether the Bay Islands do or not belong to that republic; and the question what extent of country is embraced in the term Mosquito coast, or is in the actual occupancy of the Mosquito Indians, considered as Indians, and with such territorial rights only as that description of persons are entitled to claim, according to the established public law of Great Britain, of the United States, and of Spain, or of the independent states which have succeeded Spain in America; remembering that no power exists, on the part of Great Britain and the United States, to dispose of the sovereign rights of Nicaragua, or any other State of Central America.

All these questions of political geography regard, in the first instance, the sovereignty and jurisdiction of the independent States of Central America. Great Britain and the United States have no pretension thus to intervene, except for the purpose of defining their own mutual obligations, arising out of the engagements they have contracted in order to assure, so far as they are concerned, the neutrality and the independence of the American isthmus. Regarded only as collateral considerations, affecting the construction of the treaty between the United States and Great Britain, they are questions which, if not determinable by agreement of the two governments themselves, the President would not decline to refer to arbitration.

He is aware of many practicable obstacles to the adjustment of any international difference of this nature by arbitration, of which difficulties both Great Britain and the United States had experience, in their attempt to settle, by such means, a previous controversy on the subject of the boundary between the United States and the British provinces in North America.

The President does not doubt that any one of the powers of Europe, which should consent to undertake the task of such an arbitration as is now proposed, would perform the duty with perfect impartiality; but to apply to any power to do this, would be to ask of it an act which, if granted by it, would add to its own domestic duties and labors the burden of settling complicated differences of other governments. He would greatly prefer that, in a controversy like the present, turning on points of political geography, the matter should be referred to some one or more of those eminent men of science who do honor to the intellect of Europe and America, and who, with previous consent of their respective governments, might well undertake the task of determining such a question, to the acceptance as well of her Majesty's government as of the United States.

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You are instructed, therefore, to enter into communication with her Majesty's principal secretary for foreign affairs, in relation to Central America, in order to ascertain, in the first place, whether existing differences cannot be promptly terminated by direct negotiation; and if they cannot, then to discuss the conditions of arbitration of those points of difference, as to which alone this method of settlement seems requisite or applicable; it being assumed that the other points of difference would after that yield, as of course, to conference between the Earl of Clarendon and yourself, conducted in the spirit of cordiality and frankness, which belongs to your personal relations, and which is dictated by the true interests both of the United States and of Great Britain.

I am, sir, your obedient servant,

W. L. MARCY.

GEORGE M. DALLAS, Esq., *&c., &c., &c.*

Mr. Marcy to Mr. Dallas.

[No. 23.] DEPARTMENT OF STATE,
Washington, July 26, 1856.

SIR: I proceed now to communicate to you the principles by which the President desires you to be guided, and the manner in which those principles are to be applied to the definite subjects of controversy in your negotiations with her Britannic Majesty's principal secretary of state for foreign affairs, for the purpose, if possible, of disposing of the questions in regard to Central America.

We assume the convention of April 19, 1850, as the point of departure of all discussion and action. That convention having been duly concluded and ratified by the United States, is binding on their good faith, and, as a part of the supreme law of this country, will be respected and sacredly fulfilled by the President until it shall be annulled or modified by another treaty, or the United States shall be discharged from its mutual engagements by the non-performance of them on the part of Great Britain.

It is not necessary for the President to say that he would not enter into such a treaty, if that was a question open for his decision.

It suffices for him that the treaty exists. By the stipulations of that treaty, the United States relinquished great advantages which they had or might have, obtained by seperate negotiation with the republic of Central America. At that very time this government was in possession of a treaty, needing only to be ratified by it, the effect of which would have been to place the United States in the complete and separate control of the proposed canal and its route. Such advantages were important to us by reason of our peculiar relation, political and geographical, to the American continent. We relinquished them on the supposition and expectation that we received some imperfect equivalents in the treaty with Great Britain. These equivalents are the present subjects of controversy with her, and it depends, in the judgment of the President, on what shall be determined concerning them, whether the convention is to continue to have moral authority. They are the considerations which give solidity to the stipulations and oblige the good faith of the United States.

The contracting parties declare, in a body of that convention, that they not only desired to accomplish a particular object, but to estab-

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lish a general principle. What was that object, and what that principle? On these points all possible doubt is precluded by the explicit language of various parts of the instrument.

"The particular object" of the two governments, as declared in the preamble, was to set forth and fix "their views and intentions with reference to any means of communication by ship canal, which may be constructed between the Atlantic and Pacific oceans, by the way of the river San Jaun de Nicaragua, and either or both of the lakes of Nicaragua and Managua, to any port or place on the Pacific ocean." Those "views and intentions" as to the proposed "ship canal," thus definitely described as to place and direction, are expressed in the 1st, 2d, 3d, 4th, 5th, 6th, and 7th articles of the convention.

By the 1st article, the two governments declare that "neither will ever obtain or maintain for itself any exclusive control over the said ship canal;" and that they both renounce all "purpose of acquiring or holding, directly or indirectly, for the citizens or subjects of the one, any rights or advantages in regard to commerce or navigation through the said canal, which shall not be offered on the same terms to the citizens or subjects of the other."

These "views and intentions" in regard to the particular object of the ship canal are further defined in the 5th article, as being the assurance of "the neutrality thereof, so that the canal may be forever open and free."

Finally, in the 6th article, they announce what is "the great design" of the convention, "namely, that of constructing and maintaining the said canal as a ship communication between the two oceans for the benefit of mankind, on equal terms to all, and of protecting the same."

Here, then, is "the particular object" of the convention announced distinctly three times; and it is the construction and protection of the proposed ship canal, for the common benefit of mankind, completely neutralized, and with full abnegation for themselves, at least, on both sides, of any separate advantage in or exclusive control over it.

For the accomplishment of this great object, special stipulations were necessary, so as to indicate more clearly the "views and intentions" of the contracting parties in that respect.

The fundamental stipulation is that of the 1st article, "agreeing that neither will ever erect or maintain any fortifications commanding the same or in the vicinity thereof, or occupy, or fortify, or colonize, or assume, or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America; nor will either make use of any protection which either affords or may afford, or any alliance which either has or may have, to or with any State or people, for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America, or of assuming or exercising dominion over the same."

This engagement, it is obvious, constituted the essence of the whole arrangement. It would have been yielding to a delusive expectation, and laying the foundation of future difficulties to rely upon a stipulation for the "neutrality" of a ship canal, as between the United States and Great Britain, if either of them was to be in the military occupation or to have political control, under whatever name or form, of the coast of Nicaragua, on either ocean, or of insular positions, capable in a military sense of commanding the waters adjacent to Nicaragua. The supposition of the neutrality of the canal in such circumstances would be just as absurd as to imagine that any mere

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words of a treaty could communicate to Great Britain and the United States equality of relation, political or military, to the Erie canal in the State of New York, or to the Bridgewater canal in England. There could be but little expectation that the professed objects of the convention would be obtained and preserved in good faith, unless both parties were to stand on precisely the same footing in regard, not only to fortifications, but to colonies, occupation, and sovereign jurisdiction in the whole of Central America.

Thus, at any rate, it was understood by the United States. We conceived this to be plain, from the express language of the convention. We understood that an agreement not to "occupy" excluded occupation, regardless of the question when commenced. And if there could be any ambiguity in the language employed, we conceived that the spirit of the treaty and its admitted purpose were decisive of all possible doubts of that nature.

Upon this fundamental stipulation the contracting parties proceeded to raise the superstructure of the other material conditions of the convention.

By the second article the two governments agree that, in case of war between them, the vessels of both, in traversing the canal and in approaching it, should be exempted from blockade, detention, or capture by either of the belligerents.

By the 3d, 4th, 5th, and 7th articles they agree to use influence with the government of any State possessing or claiming jurisdiction of the territory through which the canal was to pass, to induce the same to facilitate its construction; and they also agree to protect the persons and property employed in its construction from unjust detention, confiscation, seizure, or any violence whatever, and that, when completed, they would also protect it from interruption, seizure, or unjust confiscation.

By the 4th article they agree to use their good offices, whenever or however it may be most expedient, in order to procure the establishment of two free ports, one at each end of the canal.

By the 6th article they engage that they will invite "every State with which both or either have friendly intercourse to enter into stipulations with them similar to those which they have entered into with each other, to the end that all other States may share in the honor and advantage of having contributed to a work of such general interest and importance." They further agree in the same article "that the good offices of either shall be employed when requested by the other in aiding and assisting the negotiation of such treaty stipulations." And they moreover engage that each will use its good offices to promote the settlement of any differences as to right or property in the territory through which the canal is to pass, provided any such arise between the governments of Central America.

Such is "the particular object" of the convention, including "the views and intentions" of the contracting parties for the accomplishment of that object.

But, as already intimated, the two governments, in entering into this convention, had, as they declare in the 8th and last article, a desire beyond the immediate object, and that desire was to establish a general principle. What the professed general principle is they do not say in so many words. But they sufficiently indicate it by proceeding to declare that "they hereby agree to extend their protection by treaty stipulations to any other practicable communication, whether by canal or railway, across the isthmus which connects North and

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South America, and especially to the inter-oceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by the way of Tehuantepec or Panama."

Such are the separate, specific, and substantive stipulations of the convention, all which you are instructed to inform the Earl of Clarendon the President stands ready to execute on the part of the United States.

When he entered on the duties of his present office, he found that Great Britain had recently, and since the ratification of the convention, established a colonial government at the Bay Islands. He found that the British settlement at the Belize was in the process of being extended indefinitely into the States of Guatemala or Honduras; and that Great Britain, as the assumed protector of a small band of Indians in the State of Nicaragua, was continuing to assert, in their name, an authority which, whatever it might be in form, was, in substance, absolute dominion over the entire Atlantic coast of the three Central American States of Honduras, Nicaragua, and Costa Rica. All these acts were, in his judgment, palpable infringements of that primary and all-essential stipulation of the convention which excluded both governments from the occupation of any part of Central America. It became his imperative duty, in the first instance, and before making or entertaining any proposition for the execution of the treaty in other respects, to call on Great Britain to execute it in this, the foundation of all its other stipulations.

You are aware of the progress and termination of the negotiations which ensued. After protracted discussion between the Earl of Clarendon and your predecessor, touching the nature and justice of the pretensions of Great Britain in Central America, the negotiation was abruptly cut off by the declaration of Lord Clarendon, that the British government, regarding the stipulations of the treaty in the disputed matter as prospective only, declined to continue further discussion of the main question, the true interpretation of the convention, but at the same time he intimated that the difficulty might still, by means not distinctly stated, be susceptible of amicable adjustment.

My communication to you of the 24th of May last was the consequence of this intimation. The President assumed that the means of adjustment hinted at by the Earl of Clarendon were a reference of the subject to some third party as arbitrator between the two governments, which solution of the question, under suitable limitations and conditions, he signified his willingness to adopt, but with the expression of a hope, at the same time, that on resumption of the subject in a friendly spirit, it might be disposed of by direct negotiation between yourself and the Earl of Clarendon.

I am led to believe that the considerations suggested in that communication have satisfied his lordship that his hypothesis of the prospective character of the stipulation as to occupation is, after all, not one of decisive consequence, since, even if it were admitted, the great question would still remain whether England had any rightful possessions in Central America at the date of the convention, and if so, what was the character of them; and that question, among others, has, from the beginning, been presented by the United States.

Meanwhile, the President continues to entertain the views concerning the true construction of the convention which have been heretofore communicated to your predecessor and yourself. He remains, after a careful retrospect of the whole discussion, fixed in the conviction that

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Great Britain had not, at the date of the convention, any rightful possessions in Central America, save only the usufructuary settlement at the Belize, if that really be in Central America; and at the same time that, if she had any, she was bound by the express tenor and true construction of the convention to evacuate the same, so as thus to stand on precisely the same footing in that respect as the United States. You will therefore persist unwaveringly in the maintenance of these views, whenever the occasion requires their assertion.

It is not apprehended, however, that there will be occasion for any extended discussion of these points. It seems probable that a satisfactory adjustment may be reached more easily without than with an elaborate argument of the old points of controversy. If any of them require to be discussed anew, the archives of the legation will afford you ample materials for that purpose. I hasten, therefore, to state, with but two preliminary remarks, the basis on which the President is prepared to settle the pending controversy with Great Britain.

My first prefatory observation is this: The United States regard it as an established principle of public law and of international right that when a European colony in America becomes independent it succeeds to the territorial limits of the colony as it stood in the hands of the parent country. That is the doctrine which Great Britain and the United States concurred in adopting in the negotiations of Paris, which terminated this country's war of independence. It has been followed by Spain and Portugal in regard to their former colonies in America, and by all those colonies as between one another and the United States. No other principle is legitimate, reasonable, or just. When a colony is in revolt, and before its independence has been acknowledged by the parent country, the colonial territory belongs, in the sense of revolutionary right, to the former, and in that of legitimacy, to the latter. It would be monstrous to contend that in such a contingency the colonial territory is to be treated as derelict, and subject to voluntary acquisition by any third nation. That idea is abhorrent to all the notions of right which constitute the international code of Europe and America.

And yet the assumption that, pending a war of colonial revolution, all territorial rights of both parties to the war become extinguished, and the colonial territory is open to seizure by any body, is the foundation of most of the disputed pretensions of Great Britain in Central America. Her pretensions are the more untenable in this respect, in consideration of the fact of her amicable relations with both parties during the whole period of the war between Spain and her colonies. As between her and Spain she was bound by treaty upon treaty to respect the territorial rights of Spain in Central America; according to which treaties, Great Britain distinctly renounced all territorial claims in that quarter, including, either by express mention or unequivocal reference, the Belize, the Bay Islands, the Mosquito Indians, and the small district of their actual occupancy in Nicaragua. Great Britain could not, in any period of time subsequent to the year 1814, touch either of these points, without infringing her treaty engagements to Spain. On the other hand, if, during that period, she treated the Central American republics as independent states, she was equally bound to respect the territorial sovereignty which, if it did not belong to Spain, belonged to them. In either point of view, no part of it could be taken by Great Britain without usurpation of the rights in litigation between Spain and Central America, and appertaining incontestably either to Spain or Central America.

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My second prefatory observation is this: The United States regard it as an equally well established principle of public law and of international right, that no tribe or nation of Indians on the American continent can be treated as a sovereign state, people, or independent power; but each and every one of them is, by the public law of Europe and America, the subject of some European government, or of some American government the successor of a European government, within whose territorial limits such tribe or nation of Indians may happen to be. No third power can lawfully enter into political relation with any such tribe. The United States may as well undertake to maintain and hold political relation with the county of Galway, in Ireland, or the shire of Perth in Scotland, as for England to maintain or hold such relation with any tribe of American Indians outside of her own colonial possessions in America.

We, the United States, grew up as colonies of England in the possession of this elementary doctrine of the public law, not only of England herself, but of Spain, Portugal, France, and every other European government having possessions in America. I refer to the cases,* with which you are familiar, adjudicated in the Supreme Court of the United States, in which this subject has been discussed, for the proof that this doctrine is no revolutionary innovation or modern invention of the United States, but that we received it, complete in all its parts and relations, in common with representative institutions, trial by jury, rights of property, and all the rest of the muniments of public and private law, at the hands of Great Britain herself.

It has heretofore, on several most important occasions, been the province of the United States to discuss this question with England, and to have the principle distinctly admitted by her. That occurred in the negotiations of Paris, when the territorial sovereignty of the United States was first formally acknowledged by Great Britain; it occurred in the subsequent supplemental negotiations during the administration of President Washington; and, finally, during the negotiations at Ghent, when the British ministers urging, as the Earl of Clarendon now does in the case of the Mosquito Indians, ancient ties of obligation, proposed that the United States should admit British protection of certain tribes of Indians within our limits, the American ministers replied, that sooner than concede for a moment any such pretension, they would break off at once all further negotiation, and counsel the United States to proceed in the prosecution of the war; whereupon that pretension was abandoned by the British commissioners. I refer you to those negotiations for more full statement of the unalterable conviction and policy of the United States in that respect.

It is by keeping the eye steadily directed to these two great principles of public law, and by following the light which they afford, and in no other way, as the President conceives, can the present question between the United States and Great Britain be honorably and amicably adjusted.

We see, in the first place, that England can have no rights of possession or jurisdiction in Central America, except such as her treaties with Spain of 1786 and 1814 accord to her, or except such as she may have acquired by voluntary concession from some one of the republics of Central America. Anything beyond that will be incipient conquest only, not yet consummated into full right by treaty recognition.

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* Johnson *vs.* McIntosh, 8 Wh., p. 543; Mitchell *vs.* The United States, 9 Peters, p. 711; Cherokee Nation *vs.* State of Georgia, 5 Peters, p. 1; Worcester *vs.* State of Georgia, 6 Peters, p. 515.

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We see, in the second place, that all the matters in dispute between the United States and Great Britain are primarily questions of the sovereign rights of some one of the republics of Central America. We cannot give to Great Britain, nor can she take from us, that which neither has to concede. Either of us may agree with the other not to claim anything in Central America, but neither can legitimate any claim of the other there. And if either of us, having asserted claim there, is to relinquish the same, under conditions, the ultimate decision of those conditions appertains solely to the interested republic of Central America. We may separately, or in common, use our good offices with such republic to influence its determination, but we cannot of ourselves make the determination.

Thus we arrive, by incontrovertible deduction from the settled principles of public law controlling the subject-matter, to one of the leading stipulations of the convention, which is, that both governments will use whatever influence they respectively exercise with any State, possessing, or claiming to possess, jurisdiction or right over the territory which the proposed canal shall traverse, or the waters adjacent thereto, which may be called for by the exigencies either of the construction or neutral use of said canal; and also that we will jointly and severally employ our good offices with any such State to promote the settlement of any differences of right or property in said territory: in order, as the convention proceeds to say, "to strengthen the bonds of friendship and alliance which exist between the contracting parties."

Acting under the influence of these high inducements, the President directs you to proceed upon the following premises, in reference to the specific points of controversy:

THE MOSQUITO INDIANS.

These persons, it is understood, have no actual occupancy or right of occupancy, save in a very limited district, within the bounds of the undoubted sovereignty of the republic of Nicaragua. Claims have, indeed, been preferred in their behalf, extending northwardly and westwardly into Honduras, and eastwardly into Costa Rica, and even New Granada; but it is not supposed that any such claims are seriously persisted in at this time. It is a question therefore of the rights of Nicaragua.

The President proposes, in execution of the convention, that the United States and Great Britain use their influence and employ their good offices with the republic of Nicaragua, to induce that government to enter into arrangement with the Mosquito Indians for the ascertainment and fixation of proper limits of occupancy for them, and for their personal protection in the enjoyment of municipal rights within such territorial reservation, and with payment to them of proper indemnity in cash or in annuities, and with regulation of private land grants on the precise principle and substantially in the same manner which we ourselves observe and follow in our daily transactions with the Indians subject to the United States.

The President cannot himself admit as true, and therefore cannot, under any possible circumstances, advise the republic of Nicaragua to admit that the Mosquito Indians are a State or a government, any more than a band of masoons in the Island of Jamaica are a State or government; neither, of course, can he admit that any alliance or protective connexion of a political nature may exist for any purpose whatever between Great Britain and those Indians.

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But the Earl of Clarendon alleges that ancient ties of this nature do in fact exist. I had supposed that the relations referred to had their origin in the buccaneer practices and system of smuggling of the sixteenth and seventeenth centuries, and that they could confer no rights, or impose any obligations on Great Britain as a government. I had also supposed that the treaty of 1786 between Great Britain and Spain had disposed of that point, it containing stipulations by which Great Britain renounced its connexion with the Mosquito Indians by name, and they were, in consideration of that fact, admitted to pardon by the king of Spain.

I apprehend that the point of honor which labors in the mind of the Earl of Clarendon arises out of the fact of these relinquished pretensions regarding the Mosquito Indians having been without dus reflection revised in modern times.

While the President desires you to be possessed of his views on this point, he does not wish to have them urged by you unnecessarily, or at any time so presented, either in substance or matter, as to obstruct the negotiations. They are communicated to you, first, because in the judgment of the President they constitute the truth of the case, and in the second place, in order to secure a careful avoidance, either in the correspondence or in any treaty which may be made, of any admission express or implied to the contrary on the part of the United States.

What the President proposes to have done in this respect is not to concede any principle, but only to make an arrangement which, under proper guarantees on the part of the United States and Great Britain, will, as a mere fact, accomplish by unexceptionable means everything which the latter has declared that it feels bound in honor to do for the personal protection of the Mosquito Indians.

2. SAN JUAN DE NICARAGUA.

The questions on this point are somewhat connected in fact with those of the Mosquito Indians, because the original seizure of San Juan was made by Great Britain in the name of or for the Mosquito Indians, and the municipality of Greytown (so named, as it is understood, after the existing governor of Jamaica) professed to exist under the authority and the flag of the Mosquito Indians. But the occupancy of those Indians never, in fact, reached to San Juan. If it had done so, it never could have constituted the ground-work of municipal or political organization there. The very idea of a commercial seaport is totally incompatible with the tribal condition and the habits of American Indians. The ascription of the title and state of King to the petty chief of a petty band of such Indians can with difficulty be reconciled with any respectful consideration of royalty as an institution of government. Solemnly to crown such a person as King has an air of mockery rather than of dignified earnestness. At any rate no rights of sovereignty can reside in such a person.

Of course, the President cannot admit that the Mosquito Indians have any rightful connexion whatever with San Juan de Nicaragua. And they will cease to have any such connexion in fact so soon as their case shall have been disposed of in the manner already suggested.

There will remain, as to San Juan, the question of limits betwixt Nicaragua and Costa Rica, touching both the river and the harbor, and the question of the future political condition of the port of San Juan.

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The convention (of 1850) engages the United States and Great Britain to a definite line of action on each of those points. They stipulate to exercise their influence and employ their good offices to promote the settlement of all such differences between Costa Rica and Nicaragua. They also stipulate to use their good offices to procure the establishment of a free port at each end of the proposed canal; and that stipulation was designed, unquestionably, to cover the case of San Juan del Norte.

In regard to each of these points, you are instructed to say that the President is prepared to enter into such arrangements as the treaty contemplates, and to employ the good offices of the United States with the republics of Nicaragua and Costa Rica, in order to accomplish the proposed objects.

3. THE BAY ISLANDS.

That, indubitably, is a question of the sovereign rights of the republic of Honduras, to be disposed of by negotiation between her and Great Britain, in which negotiation the United States are bound by treaty to employ their good offices with Honduras.

The President, assuming that the Bay Islands belong of a right to Honduras, conceives that it would be most honorable and proper on the part of Great Britain to restore the possession of them to Honduras. If, however, the interests of the actual inhabitants of the Bay Islands, or any consideration appertaining to the construction of a new interoceanic route by the way of Honduras, should require the restoration of the Bay Islands to be accompanied with conditions, the President is prepared, in candor and in good faith, and in the spirit of perfect amity towards both of the parties in direct interest, to take such conditions into consideration in behalf of the United States.

The President, however, cannot entertain any preposition in this relation which admits the exercise by Great Britain, directly or indirectly, of any sovereign power in the Bay Islands. Its existence in any form constitutes, in his estimation, a positive infraction of the treaty. He desires that, on all proper occasions, you will courteously, but firmly, insist on this point.

I shall despair of a successful termination to the negotiation if it shall be found that Great Britain insists upon claiming and retaining the sovereignty of these islands, or if she, in any character, is to continue to hold possession of them. Such a possession on her part is inconsistent with the main object of the convention, as acknowledged by both parties—the complete neutralization of the isthmus, and an infringement of one of its express stipulations, as we interpret that convention.

4. THE BELIZE.

It is the indisputable fact that England possesses no other *treaty* rights at the Balize, except the usufruct conceded by Spain, and which, so late as the year 1826, the British government deemed it important to have confirmed by England by the Mexican republic, as the presumed sovereign, at that time, of the country in which the settlement of the Belize exists.

It is understood that Guatemala contests the claim of the Mexican republic in this respect: and it may be that the precise limits of the two republics on that side are undetermined.

However that may be, it is certain that the appellation of "Honduras," commonly applied in England to the settlement of the Belize,

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is a misnomer, originating, perhaps, in local projects of aggrandizement.

By the correspondence exchanged between Sir Henry Bulwer and Mr. Clayton, the negotiators of the convention of 1850, it was declared that, according to their understanding, the stipulations of non-occupation made by Great Britain were not intended to apply to the Belize. Whatever weight this correspondence may have as a contemporaneous exposition of the convention, it cannot, in the judgment of the President, be held to operate as an *enlargement* either of the limits or the jurisdiction of the British settlement at the Belize.

As to the limits of that settlement on the south, it must be a question either of the rights of Guatemala, or of those of Honduras, while the question of the political tenure of that settlement would seem to belong to Guatemala or to the Mexican republic.

Of course, in the spirit of the treaty, the President is prepared to exert the influence of the United States with either of those republics, to assist in promoting the adjustment of those questions in a satisfactory manner.

In a commercial or political point of view, it is not of very much moment to the United States whether the British tenure at the Belize be enlarged or not; but it is, in a military point of view, a thing of importance alike to the Central American States, to the Mexican republic, and to the United States.

Nevertheless, if serious obstacles occur to obstruct the negotiation on other points, either of interest or feeling, the President might consent that you should, in the last resort, make concessions on this point, as the means of reconciling Great Britain to other acts which she may be disposed to regard as concessions to the United States.

There is one other subject, which is of more eventual than present consequence, concerning which it may, nevertheless, be proper that you should be informed, because it may by possibility enter into the discussion of the preceding matters. I allude to the fact that, by the treaty between the United States and the republic of New Granada, of December 12, 1846, the United States enjoy certain special privileges, and are bound to certain duties of protection in respect to the interoceanic route by the way of Panama. I refer you to that treaty for the full understanding of the scope and effect of the stipulations in question.

In the treaty between the United States and the Mexican republic, of December 30, 1853, you will find stipulations, not of the same precise extent and effect, but of somewhat similar character, with regard to interoceanic communication by the way of Tehuantepec.

The President is not prepared to consent to any enlargement of the stipulations contained in the present convention restrictive of the sovereign power of the United States. The convention engages the United States not to occupy any part of Central America. The President will adhere to this engagement unreservedly, if it is unreservedly adhered to by Great Britain.

The United States also engage not to make use of any protection which they afford or may afford, nor to take advantage of any intimacy, or use any alliance, connexion, or influence which they do or may possess to or with any state or government in Central America, for the purpose of acquiring or holding particular advantages, military, political, or commercial, in relation to the proposed canal of Nicaragua. The President is also prepared to concur with Great Britain in the full and complete execution of this stipulation of the treaty.

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He is not prepared to enter into new engagements to impair any further than it is done by the present treaty the sovereign power of the United States, to confer protection, form alliance, connexion, or intimacy, and exercise influence, either in Central America or anywhere else, according as it may seem at any time best to comport with the interests of the United States.

In concluding and in continuing to execute the treaties with New Granada and with the Mexican republic, above referred to, the United States acted in their own perfect sovereign right. Nevertheless, the President stands ready, when other previous questions are disposed of, to take up the eighth article of the treaty of April 19, 1850, and discuss its application to any existing or projected interoceanic "communications, whether by canal or railway, across the isthmus which connect North and South America."

You thus have an outline of the course of action which the President desires you to pursue in the conduct of this important negotiation. You will be able, of course, to ask and receive further instructions, at any time, without much delay. Bearing in mind the general views herein presented, you will, nevertheless, exercise your discretion in entertaining *ad referendum* any propositions on the other side which you may think are deserving of consideration; and the President confidently hopes and trusts that you may succeed in bringing this long controversy to a conclusion alike honorable and satisfactory to the United States and to Great Britain.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

GEORGE M. DALLAS, Esq., *&c., &c., &c.*

Mr. Marcy to Mr. Dallas.

[No. 24.] DEPARTMENT OF STATE,
Washington, July 28, 1856.

SIR: Your despatch No. 19 was not received until that which accompanies this, dated 26th instant, was prepared. The instructions have not been revised, nor did it seem to be necessary to make any essential changes in them in consequence of the steps you have taken, as there is no conflict between what you have done and the President's views now communicated to you. The suggestion often made by Great Britain for an independent State, embracing San Juan and a district of country around it, does not appear to me to be practicable. In relation to the free ports, both of which will be in Nicaragua, there may be embarrassments in arranging the details. Nicaragua is to retain the sovereignty over both places. She will therefore desire to retain something for that sovereignty to rest on. Nicaragua will not be content to have the mere name of sovereignty when the substance is gone. The objects to be gained by the establishment of free ports are the introduction of foreign merchandise, with the exemption from onerous duties and its safety while it remains there. To these ends there must be a good police, a proper system of laws, and a faithful execution of them.

It is presumed that Nicaragua would be willing to restrict her control as the sovereign power so far as it would be necessary for these objects. The less that is required of her, the more easy it will be to get the proper concessions. It is a matter for consideration whether

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less than you have specified in your note to Lord Clarendon would not answer the purposes which the United States and Great Britain have in view in seeking to have free ports at the *termini* of any thoroughfare across Nicaragua.

I will make an observation in relation to confining the Mosquito Indians to a reservation. If they are placed, as it is proposed to have them, on a reservation, Nicaragua would probably insist on retaining the eminent domain over the district of country assigned to them, not for the purpose of exercising any direct control over them, but to prevent intrusion of persons not belonging to their tribe, upon their territory, and to secure the full dominion over the reservation, when it shall cease to be occupied by the Mosquitos. These things are well defined and understood in this country, but may not be so familiar to others.

Nothing can be effectively done in regard to either of the subjects to which I have above alluded, until there shall be a government in Nicaragua with which Great Britain, as well as the United States, would be willing and think it safe to treat. The unsettled affairs in that country at this time does not enable us to foresee when that will be the case.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

GEORGE M. DALLAS, Esq., *&c., &c., &c.*

Mr. Marcy to Mr. Dallas.

[No. 31.] DEPARTMENT OF STATE,
Washington, September 26, 1856.

SIR: The President has read with great satisfaction your despatch of the 29th ult., and the draught accompanying it, of a treaty with Great Britain, for the definitive settlement of the controversy relative to Central America.

He desires me to express his high appreciation of the judgment and skill with which you have conducted this delicate negotiation, and his entire approbation of the substantial provisions of the proposed treaty, and the annexed "separate articles."

He desires, however, some changes in the details, which, without disturbing its general frame-work will render the instrument, as he thinks, more perfect in itself, more acceptable to the United States, and more likely to be carried by the interested State of Nicaragua, without being thus rendered in anywise unacceptable to Great Britain.

I proceed to suggest these modifications, with brief explanatory observations thereon.

The treaty proposed is, of course, purely supplemental to that of April 19, 1850, and its primary object is to construe and give effect to the latter, as it was understood by the United States.

In so far as the United States are directly concerned, therefore, the President cannot extend, in any respect, the operation of the treaty of 1850, nor by implication admit the intermediate pretensions of Great Britain.

Hence, in art. IV, No. 3, and in art. VI, par. 2, the expression "government of Mosquitia," will need to be changed to "Mosquito Indians." The United States have maintained that these Indians are incapable of being a government with territorial sovereignty, and

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consequently never were a government *de facto* or *de jure*. The recognition of that tribe as a government in terms, by the United States, would be incompatible with our fixed policy in respect to this particular case, as well as that of the Indians generally of America. You will perceive that the phraseology suggested is that employed in the *projet* of treaty, signed in 1852, by Mr. Crampton and Mr. Webster. It is presumed that the British government will not object now, any more than then to employing in this connexion a word of neutral meaning, in the place of one objectionable to the United States.

The United States are only concerned indirectly in this and the other questions involved, which chiefly regard the States which constituted the republic of Central America.

In this relation, the proposed treaty is to be tendered by the present contracting parties to the republics of Costa Rica and Nicaragua as being what these republics ought to adopt, and is to be urged upon them for acceptance by the parties. It must, of course, contain no conditions which the President cannot cordially recommend to each of those republics. In other words, the stipulations must be such, in the President's view of them, as would be just and fair towards those republics. Their interest is quite as much to be respected as those of Great Britain or of the United States. He cannot, as a friend, request or advise them to do anything which he would not himself do in their place.

Regarding the subject from this point of view, the President asks your attention to the limits of the country set apart for the Mosquitos.

On a rough calculation, the reservation proposed is found to consist of about fourteen thousand square miles, or more than five and a half millions of acres; which seems to the President much more than is requisite for two, or at most three thousand Indians, whose numbers have been for years constantly decreasing.

No objection is made to the western line; but the extension north is deemed very exceptionable, and may seriously embarrass the acceptance of the arrangement by Nicaragua. It carries the Mosquito reservation up to the south bank of the large river Segovia, and to the line of Honduras. No sufficient reason exists for according so extensive a territory to this handful of Indians. But the more serious objection is, that Nicaragua would be thus deprived of the safe use of the largest river of the republic, and of the control of her frontier on the side of Honduras.

It is proposed to substitute either the line of the Brakma, or that of the Prinzapulca as the northern boundary, instead of the Waux or Segovia. The Mosquitos will then have possession of a country enormous relatively to their numbers, actual or possible.

The introductory substance of art. IV seems objectionable in form, if not in effect.

It requires an examination of the map to understand the true relation of the expressions "south of the river Waux or Segovia," and "south of the said parallel and of the river Rama." It would be more clear and definite to say: "All the territory, &c., not included within the limits of the reservation set apart for the Mosquito Indians, as described in article II, shall be recognized and declared to be within the limits and sovereignty of the republic of Nicaragua," &c.

In the items of this article are several things which the President desires to have modified.

He observes that the proposed treaty does not contain any definition of the limits of San Juan de Nicaragua or Greytown. Considering

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the nature of the provisions in favor of that port, he deems it indispensable to supply this omission.

It can be done by amending No. 2 of this article, so that it shall read thus:

"2. The republics of Nicaragua and Costa Rica shall allow the territorial disputes between them, *and the limits or extension to be given to the town of San Juan de Nicaragua*, (if the same cannot be amicably adjusted between Nicaragua and that town,) to be settled," &c.

The commerce of Costa Rica, it would seem, should be free at the *port* of San Juan as well as on the river. To secure this object, subjoin at the close of No. 2 the following: "And without being subject to any duties of import or export, tonnage duty or other tax, or public charge whatever, except for light-money and other necessary port charges."

The President has much doubt in regard to No. 3 of article IV, confirming grants made by the so-called "government of Mosquitia."

The corresponding article of the *projet* of 1852 subjected the confirmation of these grants to many qualifications, the most important of which the President wishes to have inserted in the present treaty.

To these it is not apprehended that the British government can have any objection. The need of them at this time is not less cogent than it was then.

You are instructed, therefore, to propose to the British government, in place of art. 4, No. 3, either of the following alternatives, viz:

(A.) Omit No. 3 entirely, leaving the whole question to the republic of Nicaragua.

(B.) Or insert, instead of it, this: "3. All *bona fide* grants for due consideration, which may have been made in the name and by the authority of the Mosquito Indians, and lying within the limits of San-Juan de Nicaragua, or Greytown, as they may be established, shall be confirmed: *Provided*, That no grant shall be allowed to an extent exceeding one hundred yards square: *And also provided*, That the same shall not interfere with other legal grants made previously by Spain, by the republic of Centro-America, or either of the present States of Central America: *And provided further*, That no such grant shall include land required for forts, arsenals, or other public buildings"

(C.) Or insert instead of it this:

"3. All *bona fide* grants of land, for due consideration, made in the name and by the authority of the Mosquito Indian, since the 1st of January, 1848, and lying beyond the limits of the territory reserved for said Indians, shall be confirmed, provided the same shall not exceed, in any case, the extent of one hundred yards square, if within the limits of Greytown or San Juan de Nicaragua, or one league square, if without the same; and provided, that such grant shall not interfere with other legal grants made previously to that date by Spain, the republic of Central America, or either of the present States of Central America; and provided further, that no such grant within either of said States shall include territory desired by its government for forts, arsenals, or other pubic buildings."

The president considers the contents of letter (D) No. 3, art. IV, objectionable, or at least, defective, in this, that while it enables, it does not restrict, the municipality of Greytown. In the articles of 1852, that point is carefully guarded, and he prefers to substitute, in

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substance, and with some slight changes in the same sense, the draught of that *projet*.

In the place of letter (D) of your *projet*, the following is proposed:

"D. The municipal government shall lay no duties on goods exported, nor any duties on goods imported, intended for transit across the Isthmus, or for consumption without the city; nor any duties of tonnage on vessels, except such as may be necessary for the police of the port, and the maintenance of the necessary light-houses and beacons: provided, that the present condition shall not interfere with or prevent the levy of a temporary duty on imports for the purpose of the payment to the Mosquito Indians, as stipulated in art. V."

These restrictions are called for by the interests of Nicaragua and of Costa Rica; but not less by those of the United States and of Great Britain.

These governments cannot suffer their transit trade to be subject to the discretion of the inhabitants of Greytown. The controversy in which the United States are engaged with the republic of New Granada, concerning the transit trade of the isthmus of Panama and tonnage duties in the ports of the isthmus, furnishes topics of admonition in this respect.

The President is of opinion that the inhabitants of Greytown ought not to be wholly relieved of the burden of the common defence of the country.

In the place of letter (E) of your draught, the following is proposed:

"E. Exemption from military service, except for the defence of the city within the same, or for the common defence of the country in case of invasion."

The President observes that, as permitted by your instructions, you have, in the "separate articles," proposes to sanction, so far as the United States are concerned, the present limits, and, impliedly, the new organization of the British settlement of the Balize. Of course he does not disapprove of this, but he thinks it should serve to satisfy Great Britain of the amicable purposes of this government. He therefore does not permit himself to doubt your ability to persuade her Britannic Majesty's government of the propriety of the proposed modifications of your draught; and he confidently anticipates that the treaty thus modified will be speedily completed by you, and transmitted here in season to be laid before the Senate at the opening of the next session of Congress.

I am, sir, your obedient servant,

W. L. MARCY.

GEORGE M. DALLAS, Esq., *&c.*, *&c.*

Mr. Marcy to Mr. Dallas.

[Confidential.]

DEPARTMENT OF STATE,
Washington, September 26, 1856.

SIR: With this will be sent to you a despatch suggesting modifications in the *projet* of the treaty which accompanied your despatch of the 29th ultimo, and a power to you to conclude the treaty.

Most of the modifications are of an unimportant character, though it is fit they should be made. Two of them are of a different character. One of these proposes to contract the reservation for the Mosquitos.

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The tribe is not a large one, and is constantly becoming less. The district of country indicated in the amendment seems to be abundantly sufficient for them. If there were any hope to be indulged of their ever assuming the phase of civilized life, the objection to the extent of the reservation would have less force, but considering their character and habits, that proposed is probably as good for them as a much larger region. With the restricted quantity of land, they will have less temptation to keep up their roving habits, and be more likely to have permanent homes and cultivate their lands.

The less their reservation, the larger will probably be the annuity provided for them. If left to their own choice, they would probably prefer a large annuity with less land to a large reservation with a small annuity. Besides, Nicaragua might be extremely reluctant to acquiesce in so large a reservation as that proposed in the projet.

But the modifications and addition relative to San Juan de Nicaragua, or Greytown, are far more desirable than the proposed restriction of the reservation. Unless the suggested changes in that respect can be made, or others equivalent to them, the President would not have you agree to the treaty. The dwellers at that place have heretofore claimed a vast extent of country around the port, much more than Nicaragua ought to yield up, or could yield up, without seriously dismembering the State. Restricting that town to the narrowest limits, it is asking a good deal of Nicaragua to give up almost entirely, as it is proposed to do by the amendments, her only port on the Atlantic, and by far the most important one in the State. The President could not, in conscience, ask her to surrender so much as would be claimed under the stipulations of the *projet*.

I cannot think Great Britain will be unyielding on this point, or will hesitate to accept the modifications proposed in the accompanying despatch. The adoption of them will not, as the President conceives, interfere in any respect with the objects of making San Juan a free port. Should there be difficulty on this point, you will communicate with your government in relation to it before concluding the negotiation.

In the despatch herewith sent to you, frequent reference is made to the arrangement of the 30th April, 1852, proposed by Mr. Webster, Secretary of State of the United States, and Mr. Crampton, her Britannic Majesty's minister to this government. Though that document is undoubtedly on the files of the legation at London, yet I enclose a spare copy of it with this communication.

Yours, truly,

W. L. MARCY.

GEORGE M. DALLAS, Esq., *&c.*, *&c.*, *&c.*

[Extract.]

Mr. Dallas to Mr. Marcy.

[No. 8.] LEGATION OF THE UNITED STATES,
London, May 1, 1856.

SIR: * * * * * * *

A large printed folio copy of "the correspondence with the United States respecting Central America, presented to both houses of parliament by command of her Majesty," has been furnished to me by, I

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presume, the direction of Lord Clarendon. I propose carefully to examine it hereafter, but at present have only to remark that it appears to embrace all that has heretofore been made public by you, and *a little more*. That *little more* consists of one letter addressed by Lord Clarendon, under date of 26th March, 1856, to Mr. Crampton, consoling him somewhat for having omitted so long to acquaint you with his lordship's despatch of 10th November; and also of an *extract* of a letter from Mr. Crampton to the Earl of Clarendon dated 31st March, 1856, and received the 12th of April. I beg leave respectfully to claim your particular attention to this brief *extract* with which the folio closes; it is in these few words: "It will be within your lordship's recollection that Mr. Clayton was informed by Sir Henry Bulwer, before the treaty of 1850 was signed, that Ruatan was *de jure* and *de facto* a British possession; and Mr. Clayton has on various occasions since, in conversations with me, stated that he considered Ruatan as much a British possession as Jamaica, or any other British West Indian island."

There must be some great mistake here; and I would suggest the urgent expediency of communicating to Mr. Clayton this statement of Mr. Crampton, so that he may, to the extent of its inaccuracy, correct it at the earliest day, in the most public manner.

It may be important that I should be in possession of the exact truth in regard to it without the least delay. * * *

Mr. Dallas to Mr. Marcy.

[Extract.]

[No. 9.] LEGATION OF THE UNITED STATES,
London, May 9, 1856.

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You will have observed from the newspapers, that Sir Edward Bulwer Lytton, in the House of Commons, two days ago, assented to the request of Lord Palmerston, and postponed his motion on the subject of Central America until after the holidays, which commence to-night, and will last in effect to Monday, the 19th instant. The remark of the premier was, that the government of the United States had received the formal offer of arbitration, but had not yet replied to that offer, and it was expected that an answer might arrive, and so the negotiation be closed before the expiration of the suggested delay.

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Mr. Dallas to Mr. Marcy.

[Extract.]

[No. 10.] LEGATION OF THE UNITED STATES,
London, May 23, 1856.

SIR: * * * * * * *

The condition of things in Central America attracts great attention. The prospects of General Walker in Nicaragua are, rather hastily, pronounced desperate. The intercepted letters, showing the "complicity" of the British government in the war waged by Costa Rica

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against Walker, and, indeed, against the presence of any Americans on the isthmus, have excited a keen anxiety as to their probable effect upon the popular mind, as well as upon the government policy of the United States. Lord Elgin, as soon as Parliament met after the holidays, on Monday, the 19th instant, questioned the Earl of Clarendon, in the House of Lords, as to the genuineness of the published correspondence. Its genuineness was promptly admitted; but an effort was made to take the edge from that admission, by saying that the engagements to furnish arms had not been carried into effect, and that, according to the information sent by Mr. Crampton, *you* were avowedly as solicitous to see the fillibusters "rooted up" as was her Majesty's government. It was said that, in answer to Mr. Wallenstein's proposal that the British government should "accept the protectorate of those countries," he had been told that "the government was determined to have nothing whatever to do with any interference with the affairs of Central America." Still, it is undeniably established that on the very first occasion which presented itself, this government, speaking through the foreign office, if it did not actually send two thousand muskets, owing at first to the want of authority in the Costa Rican agent to receive them, promptly expressed its willingness to do so, and its gratification at finding that Costa Rica was taking "*a right step*" by invading Nicaragua. It is difficult to avoid seeing a conflict here between profession and practice. For if this readiness to supply arms, and to encourage their employment against Nicaragua, have not something to do with interfering in the affairs of Central America, I am at a loss to conceive how anything short of the loan of a regiment of red-coats, can have. When I spoke at the Mansion House of the possibility that some inexorable overruling State policy might baffle all my efforts at conciliation, I had no reason for thinking that its finger would so soon show itself in Central America. Here it already is beaten from its covert and exposed—in disproof of perpetual protestation, and plainly inconsistent with the purposes and provisions of the Clayton-Bulwer treaty! We shall have no reason to be surprised if, under the pretext of opposing fillibusterism, buccaneering, plunder, and robbery, all of these Central American States are allowed to enjoy the shelter of a British protectorate. Lord Clarendon told the lords that it had been repeatedly sued for, and that he had declined giving it. In what shape it could be more effectively given than in the shape of two thousand muskets, it is not easily to conjecture; nor how long this ministry may consider it expedient to envelope their fixed, unremitting, and subterranean policy of commercial and political encroachment in a mere verbiage of non-interference. The government of Great Britain is not the manly above-board government it formerly was; and this intercepted Costa Rican correspondence shows us the extent to which we can rely upon its disclaimers.

I received two days ago from Mr. William Brown, member for Liverpool, the information that "the last West India packet brought the wanting powers, &c., accrediting Señor Herran to her Majesty's government as representative of Honduras; and that he is instructed to act in harmony with Mr. Alvarado, and propose a treaty with Great Britain, parallel in terms with that to be proposed to the United States, so as to avoid any ground of jealousy between the two countries." This statement has, no doubt, been made by Mr. Squier, who is now in Paris, and who may be expected to accompany Señor Herran to London very soon. It is said that the *projet* which Messrs. Herran and Alvarado are empowered to submit to the British govern-

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ment, and which involves a restitution of the Bay Islands to Honduras, receives the countenance of the Earl of Clarendon. If that be correct, our controversy on the construction of the treaty may be relieved from one of its chief practical difficulties; and we shall only have to look carefully at the conditions or terms of the proposed restitution. The instructions of your No. 7 will be kept in mind; and, after possessing myself of the details of the plan, I will abstain from any definite action, in view of the President's having ample opportunity to consider and decide in respect to them. Perhaps, indeed, it is intended to defer any negotiation on the subject with us until the matter be matured, if not perfected, with this government, and then to transfer the scene of business to Washington. Considering the very different relations in which the two countries stand towards the Bay Islands, it is not easy to anticipate the exact character of a treaty "*to be proposed to the United States, parallel in terms with that proposed to Great Britian.*" I do not myself expect to see realized the alleged favorable inclination of Lord Clarendon. Possibly I have misconstrued the formality with which the creation of the new colony has been announced, and the efforts to give it promulgation through the newspapers. But I shall be agreeably disappointed if, after an affectation of generous disposition to reach some arrangement, insurmountable impediments are not discovered to exist in the details.

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Mr. Dallas to Mr. Marcy.

[Extracts.]

[No. 11.] LEGATION OF THE UNITED STATES.
London, May 27, 1856.

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My impressions are exceedingly strong as to incidents which have recently occurred. Their import is not, I think, to be mistaken. That a secret understanding and arrangement exists between this government and Costa Rica, extending, perhaps, to other Central American states, by the operation of which the Clayton-Bulwer treaty is to be got rid of, and the isthmus brought under British control, so as to disjoint our Union, and monopolize the commercial avenue, I cannot avoid deducting from the intercepted correspondence, the endless and measureless denunciations of Walker, the prostitute perversions of your private conversations with Mr. Crampton, and this cool proceeding of Captain Tarlton. Of course these impressions, until verified by more flagrant detections and manifestations, I do not choose to make the groundwork of my conduct here; but I express them to you, that you may give them the weight you think they deserve.

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The commissioners from Central America, Herran and Alvarado, have not yet called upon me in reference to Mr. Squier's projét, and I am inclined to believe, from information given me by Mr. William Brown, that their intention to do so has been in some way changed. He is told that they consider themselves bound in honor and interest to do nothing in the least disrelished by the United States; that the government of the United States is not, as they suppose, in favor of their scheme, and that while under this impression they will not ap-

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proach this government. I thought myself warranted in saying that, so far as the simple restitution of the Bay Islands to Honduras was involved, I was quite prepared to tell them that the President entirely approved; but if that act were to be accompanied by conditions or stipulations of any sort, of course those conditions or stipulations must be first communicated and examined before the President could form or express any opinion about them. Mr. Brown said he would write this to Mr. Squier.

I am, dear sir, &c.,

G. M. DALLAS.

Mr. Dallas to Mr. Marcy.

[Extract.]

[No. 12.] LEGATION OF THE UNITED STATES,
London, May 30, 1856.

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Mr. Clayton's emphatic contradiction, on the floor of the Senate, corroborated by Mr. Crittenden, of Mr. Crampton's statement about his repeated admissions that Ruatan was as certainly a British island as any of her West India possessions, reached here yesterday, and has caused a great sensation. I have yet heard no attempt at excusing or extenuating the statement. Let it be remembered, too, that it is an instance of a course of conduct as to which they affect to be particularly and punctiliously jealous, namely, the disloyal perversion of private conversation.

My conference with the Earl of Clarendon was held at the hour he designated, and obliged me to forego an engagement to meet the Judges and the Bar at the Mansion House. The consequence was that the Lord Mayor, by whom I was toasted, ascribed my absence to the transaction of business with Lord Clarendon, and that statement appearing in next morning's Times, consols fell a quarter per cent! Such is the sensitive condition of the public mind on existing American relations.

I have the honor to be, dear sir, your most obedient servant,

G. M. DALLAS.

Hon. WM. L. MARCY,
Secretary of State.

Mr. Dallas to Mr. Marcy.

[Extract.]

[No. 13.] LEGATION OF THE UNITED STATES,
London, June 3, 1856.

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I subjoin copies of two letters which have passed between Mr. Squier and myself, on a subject as to which the President's instructions, contained in your No. 7, are ample and explicit. I think I can detect in Mr. Squier's letter the existence of some unavowed impediment to the progress of his scheme. It may be a distrust as to the extent Señor Herran may feel disposed to go, if the negotiations with this govern-

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ment be once in train. Hence I felt anxious to disclaim any unfavorable sentiment on the part of the President, reserving his judgment on the possible stipulations or terms.

The reception of Padre Vigil, involving a recognition of the "Walker government" of Nicaragua, has not produced the impression that was anticipated. Of course it is abused; everything said or done by the United States, which does not square with the policy or ethics of England, is necessarily open to measureless abuse by the press here. But it is hardly a nine days' wonder, for the "Times" of yesterday, under the influence of more reason or greater panic than usual, hastens to suggest that it is not only "no case of war, it is not even necessarily a ground of diplomatic complaint," and tranquilly recommends "that in the present critical state of the relations between the two countries rather to pass this matter by in silence than to incur the risk of introducing fresh difficulties into a discussion already sufficiently perilous, or give an excuse to those who are even now only too ready to seek an occasion of quarrel."

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6 RUE MUR DES CAPUCINES,
Paris, May 28, 1856.

MY DEAR SIR: The fact that both of the gentlemen holding diplomatic powers from Honduras (the one as minister to England and the other to the United States) are instructed to act with my advice and concurrence, must be my apology for taking an active part in matters with which I am not officially connected, and more especially for the liberty which I now take of writing to you.

That a great error was committed in negotiating the Clayton and Bulwer treaty I believe everybody is now forced to admit—an error alike of principle and policy. That the treaty has been violated in letter and spirit by Great Britain, in the occupation and colonization of the Bay Islands, no impartial judgment will deny. Under such circumstances, but two lines of conduct are open to the United States; first, the *enforcement* of the treaty by the expulsion of the English from Ruatan; and, second, the abrogation of the treaty. And here comes the practical difficulty. Will the United States make the occupation of Ruatan a cause of war? I am constrained to believe that the material interests involved are not sufficiently great and obvious to be weighed against the clear and incalculable evils of war. Will the treaty be abrogated? Can a majority be found in the Senate of the United States to advise and second such a course? As parties are at present constituted in that body, or as they are likely to exist for some time to come, I am forced to think that we cannot look for any such action. But even if such an abrogation were to be made, the act would only tend to fasten more firmly the British hold on the Bay. Islands, and their liberation, even then, could only be effected by force—by a war. What, then, can be done under all the circumstances of the case? It is most threatening and dangerous for us to have England build up another great military station, dominating our highway between the seas; and yet such a station is slowly but surely growing up in the Bay Islands, the strategetical and military capabilities of which are now but imperfectly understood even by England herself. The longer they remain in her hands the more tenacious will be her hold. Hence the vital importance of procuring their restoration to

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Honduras, if it can be done without involving consequences more grave than those which must follow from a consolidation there of British interests and power.

When, last fall, the discussion as between England and the United States came to a "dead lock," and it became obvious that England had taken a position from which she could not recede without appearing to yield to the pressure of the United States, I gave up the hope of procuring the restitution of the Bay Islands, except through direct negotiations on the part of Honduras. Such negotiations would at least test the sincerity of the pretensions of the British government, that they did not attach any great value to the islands, but were not to be bullied out of what they conceived to be their rights over them.

I therefore wrote to Honduras, urging the appointment of a minister to proceed upon behalf of that State to London, empowered to open negotiations upon the subject, in case he should receive previous indications that the British government was disposed to treat on the basis of a restitution of the islands. I also pointed out the necessity of doing nothing except on terms which would be perfectly acceptable to the United States, which stood in the relation of first friend to Honduras.

As you are aware, these suggestions have been acted upon, and Mr. Alvarado, appointed to the United States, and Mr. Herran to England, are now both in Paris with full powers and instructions. The latter do not authorize them to take a step except with my advice and concurrence, and, furthermore, impose upon them the necessity of doing nothing which should be unacceptable to the United States. They are ready to treat with England on the conditions:

1. Of the surrender or restitution of the Bay Islands.
2. Of the recognition on the part of Honduras of all rights of property and interest which have sprung up under English occupancy.
3. Of legitimatizing as citizens all inhabitants of the islands as may elect to become such, and guarantying the same rights, &c., to the others as belong to foreigners generally residents in the State.

I am not sure but that they would be willing to admit the enjoyment by the people of the islands of such special municipal rights as might be deemed necessary or proper for their good regulation, in view of their antecedents and differences of language, provided that, in the opinion of the United States, such concessions could be safely made without affording grounds for future British interference. Mr. Brown is decidedly of opinion that the British government would accede to these terms; but I fear that it may insist upon stipulations which we could not consent to see admitted, but which might be secured from Señor Herran by one means or the other, in case he should enter into negotiations. It seems to me of some importance, therefore, that before his credentials are presented a basis of negotiation, an *ultimatum*, should be agreed upon, which should contain all (but nothing more) that the United States would advise Honduras to concede. Mr. Herran and Mr. Alvarado would both be glad to exchange views with you on this and other points, and would be willing to make a special trip to England for that purpose. They authorize me to say that they would meet you at any day you might think proper to designate—say at *Brighton*, which is near London. I think Mr. Herran, under all the circumstances, would prefer not to go to London at present. Mr. Brown, if his presence should be thought desirable, would probably be willing to visit Brighton for the purpose indicated.

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It seems to me that Mr. Herran should be fully impressed with the views and wishes of the United States in this matter before entering on his mission. The propriety of his entering on it at all may, perhaps, be questioned. Unless there should be good reason for believing that he would be successful in his object, I should advise against taking any step whatever.

I have only, in conclusion, to ask your pardon for intruding this long and discursive letter on your time and attention.

Mr. Brown writes to me that Captain Fitzroy has made a most favorable report to Lord Clarendon on our proposed railway.

With high respect, your very obedient servant,

E. GEORGE SQUIER.

Hon. GEORGE M. DALLAS, *&c., &c., &c.*

[Private.]

LEGATION OF THE UNITED STATES,
London, June 1, 1856.

DEAR SIR: Your letter of the 28th May, 1856, did not reach me until the 30th, after I had seen Mr. Brown and requested him to convey to you my sentiments.

I thank you for the clear and full statement you have given me of your position and views. It has no doubt occurred to you that our government cannot, especially at this juncture, participate in any negotiation, having for its object a new disposition of islands over which they can pretend to claim no right of sovereignty whatever. The group, headed by Ruatan, is really part of Honduras, but is occupied and colonized by Great Britain. The question is, therefore, to be adjusted by those two governments, exclusively. If the latter can be persuaded by Señor Herran to do what is just and restore the islands unconditionally to Honduras, such a course will be cordially approved by the United States; first, as a measure of right; second, as a measure favorable to the independence of their own commerce and intercourse; and third, as a measure removing practically one of the leading causes of difficulty with this country.

If, however, the restitution cannot be effected except upon terms or stipulations which would divest it of substantial and permanent character, leaving the islands subject in the remotest degree to English influence or law, and ready to relapse, at a more propitious moment, into their present colonial dependence, the United States could not fail to regard it with disfavor: first, as a source of future quarrel between Honduras and Great Britain; second, as, on the part of the latter, only a plausible evasion of an existing issue; and, third, as legalizing, without substantially disarming, the actual usurpation.

I do not think that the government at Washington would find anything in the *three conditions* you have enumerated at all questionable; but there is something in your suggestion about admitting the inhabitants to the enjoyment of special municipal rights which savors of keeping up the distinction between the English citizens and the other citizens of Honduras, and so facilitating the future relapse to which I have adverted. To this the President would probably seriously object. Perhaps you have stated it somewhat vaguely; and, indeed, until the "special municipal rights" are distinctly enumerated, I do not wish to hazard a positive opinion.

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The moment is perhaps unfavorable to action. The two nations are much excited by the recent events, and are watching each other with extreme jealousy. It is not merely impossible for me to leave London for an hour, but I should fear that my meeting Messrs. Herran and Alvarado just now, anywhere, would excite suspicions and impede their progress. In a short time the cloud will either disappear or burst.

I am, very respectfully, dear sir, your friend and servant,

G. M. DALLAS.

Mr. Dallas to Mr. Marcy.

[Extract.]

[No. 14.] LEGATION OF THE UNITED STATES,
London, June 10, 1856.

"Your highly interesting despatches, Nos. 13 and 14, concerning the two points of controversy, the Central American treaty of 1850, and the recruitment of the foreign legion of her Majesty's army, respectively, together with your confidential letter, dated the 27th ultimo, reached me from the steamer Asia, arrived at Liverpool, late in the afternoon of yesterday. They were carefully read; and, appreciating the great importance of their contents, I immediately addressed to the Earl of Clarendon a request for an interview at his earliest convenience. I hoped to have obtained an answer and an appointment this morning, but no reply has come, and of course I despair of being able to let you know the sense of this government on them by the present opportunity. My own impression is, that these papers are so strongly marked by a conciliatory spirit, and make discriminations so obviously just, that they cannot but be accepted as a basis upon which the friendly sentiments and relations of the two countries may, honorably to both, be frankly restored. If this be not the result, my suspicions of a predetermined course of hostility, let what may be said or done, will receive confirmation. I feel fully convinced that your disposal of Mr. Crampton and the consuls will, whenever it becomes fairly a topic of parliamentary discussion, be acquiesced in by a decided majority. This is a risk that Lord Palmerston will avoid if he can, even should his candor not control his policy.

"I am, very respectfully, dear sir, your most obedient servant,

G. M. DALLAS."

Hon. WM. L. MARCY,
Secretary of State.

Mr. Dallas to Mr. Marcy.

[Extracts.]

[No. 15.] LEGATION OF THE UNITED STATES,
London, June 13, 1856.

SIR: * * * * * * * *

I took with me to the foreign office, at the time appointed, your two despatches received on the 9th instant, to wit: No. 13, restricted to the Central American, or treaty question, and the offer of arbitration,

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and No. 14, announcing the decision of the President respecting Mr. Crampton and the British consuls at New York, Philadelphia, and Cincinnati. * * * * * * *

I opened the business by observing that my last communication from you bore the same date as his from Mr. Crampton, and I presumed that Mr. Crampton had not received his passports until after he had written. Your two letters were then read by me, beginning with No. 13, his lordship holding a pencil in his hand and occasionally making a memorandum.

When I had finished No. 13, he was obviously much gratified by its tone and import, and he remarked with some warmth that it would be disreputable to both governments, if, upon a platform written with so much clearness, and in a spirit so candid and conciliatory, they failed to reach an adjustment of the whole difficulty.

He recurred to his memoranda, and observed that the President was perfectly right in what he said in reference to the British claim of "*possessions*" in Central America at the date of the treaty; that they claimed no "*possessions*" whatever; that the Belize never had constituted a part of Central America; that San Juan, or Greytown, was no "*possession*" of theirs, but they had prevented its being taken from the Mosquitos by Nicaragua, while it was still the subject of negotiation, by virtue of their protectorate, and had done no more. He then entered into some explanations of the reasons and motives by which he had been governed in his own personal action at several stages of the negotiation, and these explanations, as he stated them to be wholly private and unofficial, I do not think it proper or material to repeat. As to the Bay Islands, he thought that the character of their original and peaceful occupation by British subjects was somewhat mis-apprehended by our government, and he was perhaps not quite explicit here; but he concluded by emphatically declaring that we did not seem to be aware of the immense change which had taken place in their public opinion and their policy as respects colonial establishments; and that while Great Britain could not submit to be pushed out of a place she actually occupied, he would not give three coppers to retain any post on the Central American territory or coast from which she could honorably retire.

He appeared struck, almost to approving, by the suggestions as to arbitrating *the facts* referred to in the despatch, independently of the mere literal construction of the treaty, and recurred to a letter he had received from Mr. Crampton, as long ago as January, 1855, reporting a conversation with the President, and subsequently a conversation with you, in which that idea, broached by Mr. Crampton, was at least entertained by both the President and yourself. Such a course might disentangle the dispute, and leave the whole matter arrangeable by further negotiation. He saw nothing beyond the reach of frank and friendly negotiation. But he closed by adding, the whole despatch was so important and interesting that I must be aware he could say nothing definite without first consulting with his colleagues in the government.

The impressions made upon my mind by all that was said by Lord Clarendon, during this part of our conference, are strong that a real disposition exists to close all controversy about the treaty and Central America, if it can be done without seeming to be coerced, and compatibly with what are esteemed to be the obligations of honor on the score of the protectorate. To be sure, this is pretty much the conclusion heretofore attained. But, in listening favorably to the projet of

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resolving contested facts by arbitration as a means of facilitating the interpretation of the treaty, and in assenting to the probability that, after such an arbitration there would be increased hopes of adjustment by negotiation, also in the emphasis with which he disclaimed holding, as at all valuable to this government, any post, territorial or insular, in Central America, in connexion with the assertion of a change in their colonial policy, I think I perceive a relaxation in the sternness with which his positions were heretofore occupied, and a readiness to suggest, by-and-by, or to accept when suggested, what may enable them to surmount the only existing obstacles to arrangement. Indeed, I was agreeably surprised, though I forbore to manifest it, at the apparent warmth of welcome given to your paper, and augur beneficial results.

* * * * * * *

Just before terminating our interview of the 11th instant, Lord Clarendon adverted to the letter I had written to him of the 9th (and of which I sent you a copy in my No. 13) respecting the protest of Captain Tinklepaugh, of the Orizaba, against Captain Tarleton, of the Eurydice. He said that the report of Tarleton had reached the Admiralty, and, if reliable, gave an entirely innocent, if not laudable, aspect to his proceeding. He read to me portions of that report, by which it appeared that an agent of the Transit Company, by whom the *river steamer* was owned, had asked his interference as specially authorized by Mr. Vanderbilt to do so; that the chief officer of the Transit Company had, through that channel also, invoked him; that Captain Tinklepaugh himself requested him to come on board the Orizaba, to examine the list and put questions to the passengers as to their destination; and that the delay incident to the whole transaction was slight, and unproductive of the least injury. I renewed the request I had made in my letter for a copy of this report, and said that I was extremely anxious to transmit to you any explanation which might have a tendency to allay the feeling the transaction was likely to produce. He yesterday sent me copies of the report and its accompanying documents; but has accompanied them by a note which requests me to "*have the goodness to consider them as confidential, and not intended for publication.*

* * * * * * *

I am, very respectfully, sir, your most obedient servant,

G. M. DALLAS.

Hon. WM. L. MARCY,
Secretary of State.

Mr. Dallas to Mr. Marcy.

[Extract.]

[No. 16.] LEGATION OF THE UNITED STATES,
London, June 20, 1856.

* * * * * * *

I now with much pleasure call your attention to the debate, if that may be called debate wherein all agreed, that took place on the 16th instant in both houses of Parliament. It was accurately reported in the Morning Post of the 17th. The declarations of Lord Palmerston

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as to the light in which your Nos. 13 and 14 are regarded, have particular interest. They put an end to all controversy about Mr. Crampton and his measures to recruit for the British foreign legion. They retain undisturbed the diplomatic intercourse of the two countries, and they inspire a hope that we can enter with restored feelings of mutual amity upon a plan of adjustment in respect to Central America, by which the grave difficulties of that subject may be surmounted. Lord Derby, to be sure, in the House of Lords, relaxes nothing of the hold against the administration which he derived from their culpable origination and mismanagement of the recruitment scheme; and Mr. D'Israeli, in the House of Commons, branching into views on annexation, and American policy, generally, of much interest and importance, is resolved to keep the ministry responsible for their continued and unnecessary, and finally mortifying quarrels with us. The theme is now, however, withdrawn from international, and restricted to the area of domestic and party discussion.

The sudden change thus introduced in the condition of things must lead to opportunities which, in the interests of peace, ought to be mutually improved; and you need not be surprised if, as soon as a somewhat natural sense of wounded self-esteem has yielded to reflection, the British government and people exhibit an entire and cordial readiness to cultivate kinder and closer relations with the United States. The revulsion from irritated and angry feeling to friendly confidence cannot, I think, fail to be accompanied by corresponding acts. It is due to the President and yourself to say that so auspicious an aspect in our public relations is exclusively, and by almost unanimous opinion ascribed to the equally able, firm, and conciliatory despatches last sent to be laid before Lord Clarendon. These papers disarmed the spirit of controversy, and made renewed amity, at a threatening crisis, compatible with the most jealous sense, on both sides, of national dignity and honor. Excuse me for adding, that had their effect been other than it has been, the representative of the United States was prepared, notwithstanding his personal gratitude for unmeasured hospitality and kindness, to quit England instantly on the slightest intimation that, owing to Mr. Crampton's dismissal, his presence here had become unwelcome.

Until the ministry have passed through the parliamentary ordeal now in activity, founded upon their course of American measures, and until I receive the replies which Lord Clarendon, in his answer to Lord Derby, stated to be "not yet prepared," to your Nos. 13 and 14, it might be esteemed rather precipitate to seek to enter upon the Central American difficulty with a view to its adjustment by negotiation. Such an adjustment, without arbitration, Lord Clarendon's language and manner, in my interview with him on the 11th instant, described in despatch No. 15, have led me to consider far from impracticable. I hope to find him unchanged in this respect; and it will be my first aim to obtain, if possible, from his lordship the views of her Majesty's government, as to the mode by which, in their opinion, so happy a close to the controversy may be reached. Should it turn out that arbitration is discovered to be an indispensable preliminary, as a means of adjustment, the statement of the points and terms of arbitration will, of course, exact great care and precision, so that they may conform to the rules and instructions contained in your No. 13, and in your confidential letter of the 27th of May, 1856. And permit me to suggest that, in order to justify my acting promptly in respect to any proposition which may be suddenly made as to the

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choice of one or more arbitrators, it would be expedient that you should apprise me as soon as possible of the President's preferences. May it not be most prudent to have one arbitrator selected by each party, provided he be not objected to by the other party; and the two thus chosen authorized, should their judgments differ, to *agree* upon an umpire.

Hon. WM. L. MARCY, *Secretary of State.*

Mr. Dallas to Mr. Marcy.

[Extract.]

[No. 17.] LEGATION OF THE UNITED STATES,
London, June 27, 1856.

SIR: I yesterday received from Lord Clarendon the answer to your Nos. 13 and 14, dated respectively the 24th and 27th of May, 1856. You will receive copies of those answers attached to this despatch.

The results of these papers are, first, a close to the controversy respecting the conduct of her Majesty's recent minister in the United States, Mr. Crampton, and of the three consuls, Messrs. Barclay, Matthew, and Rowcroft; and second, the taking a fresh point of departure in the negotiation as to the construction and effect of the treaty of April 19, 1850, and as to Central America generally.

Lord Clarendon, in his letter upon the subject of the treaty and Central America, expresses his readiness to enter into the communication with me proposed by the President, "in order to ascertain whether existing differences cannot be promptly terminated by direct negotiation, and if they cannot be so settled, then to discuss the conditions of arbitration on those points of difference as to which this method of settlement may be requisite or applicable." I shall, of course, therefore, lose no time in entering into this communication, and hope soon to apprize you of its progress and prospects.

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Lord Clarendon to Mr. Dallas.

FOREIGN OFFICE,
June 26, 1856.

SIR: The despatch of the Secretary of State of the United States, dated the 24th ultimo, a copy of which was placed by you in my hands on the 11th instant, on the subject of the difference of opinion between the British government and that of the United States, regarding the construction and effect of the convention of April 19, 1850, and the subject of Central America generally, has received the attentive consideration of her Majesty's government.

Before I proceed to communicate to you the views of her Majesty's government, in reply to this despatch, I will beg leave to remark, in reference to Mr. Marcy's observation that direct communication upon the main subject had for some time ceased between Mr. Buchanan and myself, that such communication had ceased because it appeared to her Majesty's government that further correspondence was not likely to lead to a settlement of the question at issue. That question turned

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upon the interpretation of the treaty of 1850, respecting which her Majesty's government learnt, for the first time, from Mr. Buchanan, that a view had been taken by the present government of the United States different from that of the preceding government. The treaty arose out of the various projects which had been started for commercial communications across Central America, between the Atlantic and the Pacific, and especially had reference to the scheme of a ship canal by the river St. John and the Lake Nicaragua. The main object of the treaty was to provide a security that such lines of commercial communication, through whatever part of Central America they might pass, should be free for the use of all nations, and should not fall under the exclusive control of any power.

These objects and purposes are clearly explained and stated in the first article, which is as follows:

"The governments of Great Britain and the United States hereby declare, that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said ship canal; agreeing that neither will ever erect or maintain any fortifications commanding the same, or in the vicinity thereof, or occupy, or fortify, or colonize, or assume, or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America; nor will either make use of any protection which either affords, or may afford, or any reliance which either has or may have, to or with any State or people, for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America, or of assuming or exercising dominion over the same. Nor will Great Britain or the United States take advantage of any intimacy, or use any alliance, connexion or influence that either may possess with any State or government through whose territory the said canal may pass, for the purpose of acquiring or holding, directly or indirectly, for the subjects or citizens of the one, any rights or advantages, in regard to commerce or navigation through the said canal, which shall not be offered on the same terms to the subjects or citizens of the other."

Her Majesty's government deemed that the plain and unquestionable interpretation of this article was, that each government was prohibited from doing what the words of the article explicitly declared that neither government should thereafter do; but that both governments retained the rights which they had previously enjoyed, where those rights were not expressly limited or abandoned.

With regard especially to the protection which, for a long course of time, the British government have afforded to the Mosquito Indians, this article, so far from requiring that protection to cease, acknowledges its existence, and contemplates its continuance; for the article says that neither party will "make use of any protection which it affords or may afford, to any State or people, for the purpose of erecting or maintaining any fortifications, or of occupying, fortifying, or colonizing the countries therein specified." The treaty therefore does not require existing protection to cease, but only forbids using such protection for certain specified purposes.

I repeatedly informed Mr. Buchanan that it was the wish of her Majesty's government to withdraw from the protectorate of Mosquito, provided they could do so with honor, securing adequate provision for the king and the Indians of that country; that Ruatan was a possession of her Majesty's crown; and that, as her Majesty's government could not consent to abandon the protectorate of Mosquito, or to give

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up the island of Ruatan, merely in pursuance of an interpretation given by the government of the United States to a treaty, which interpretation her Majesty's government did not admit, the most usual, as well as the most friendly course to pursue, was to refer the meaning of the treaty to the decision of a third power.

This offer was made by me to Mr. Buchanan by the direction of her Majesty's government; it was several times renewed and discussed between us. Mr. Crampton ought, undoubtedly, according to his instructions, to have communicated to Mr. Marcy, at the time when he received it, my despatch of the 10th of November, giving an account of my conversation with Mr. Buchanan; but his not having done so was of little consequence, as Mr. Buchanan had often assured me that everything which had passed between us had been duly reported to his government. I am therefore at a loss to understand how it happened that the President should, as stated by Mr. Marcy, have been induced only by certain collateral incidents to infer that arbitration by a third power of the difference between the two governments in relation to Central America, had been proposed by her Majesty's government.

A misconception has, however, taken place, which is to be regretted on account of the delay which it has occasioned; but this has been rendered comparatively unimportant by the despatch of Mr. Marcy, and the course of proceeding which he now proposes for the adoption of the two governments. Her Majesty's government being as solicitous as the President to preserve unimpaired the friendly relations of the two countries, are prepared to enter into negotiations on these matters, with a sincere desire to bring them to a speedy and satisfactory conclusion.

Mr. Marcy is correct when he states that Great Britain lays no claim to any possession or territory on the Mosquito coast; and her Majesty's government consider now, as they always have considered, that the future condition of the Mosquito Indians, for which her Majesty's government are bound in honor to provide, might be assured by direct negotiation.

It is not contended, and never has been contended, that the British government, consistently with the stipulations of the treaty of 1850, could, in the name of the Mosquito Indians, "take with military force, and hold, San Juan de Nicaragua, or any other point in Central America;" and her Majesty's government agree with Mr. Marcy that such a proceeding would be irreconcileable with the independence and neutrality of the isthmus, and would render the treaty nugatory to the United States; but no such pretension has ever been advanced, and no such proceeding has been contemplated.

With respect to the district of Belize, her Majesty's government consider that the only question to be determined as regards Central America is that of the boundary between that country and the British possessions; and in the settlement of that question no insurmountable difficulty need be anticipated.

With respect to Ruatan and the other Bay Islands, these, at different periods, have been held by Great Britain as well as by Spain, and, having been again occupied by British settlers, formal possession was taken of Ruatan in 1839 by Great Britain, which has since been uninterruptedly maintained. The population increased fast, and magistrates were, from time to time, appointed by the superintendent of Belize until 1852, when these islands received a regular form of colonial government, solely for the purpose of their better internal

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administration; but Great Britain did not thereby acquire any territorial rights that she did not previously possess.

The government of the United States, however, maintained that, even supposing the Clayton-Bulwer treaty was only prospective in its operation, these islands were no part of the British dominions earlier than 1852.

If the differences between the two governments on this subject cannot be arranged by direct negotiation, there seems no reason why they might not form the matter of a reference to a third power.

Her Majesty's government have learned with satisfaction that you are instructed to enter into communication with me in respect to Central America, in order to ascertain, in the first place, whether existing differences cannot be promptly terminated by direct negotiation, and, if they cannot be so settled, then to discuss the conditions of arbitration on those points of difference as to which this method of settlement may be requisite or applicable.

This is the course which her Majesty's government have throughout been willing to adopt; and I have accordingly the honor to inform you that I am prepared to enter into the proposed communication, and I trust that our conferences will be conducted in that spirit of cordiality and frankness which, as Mr. Marcy justly observes, is dictated by the true interests of Great Britain and the United States.

I have the honor to be, with the highest consideration, sir, your most obedient humble servant,

CLARENDON.

GEORGE M. DALLAS, Esq., *&c., &c., &c.*

Mr. Dallas to Mr. Marcy.

[No. 1.] LEGATION OF THE UNITED STATES,
London, July 1, 1856.

SIR: Agreeably to the tenor of the two notes which are annexed in copy to this despatch, I yesterday had my first interview with Lord Clarendon on the subject of Central America.

As your instructions of the 27th May, 1856, desired me "first to ascertain whether adjustment by negotiation is practicable, and obtain as far as you can the views of her Majesty's government as to any mode by which that result can be reached," I determined to confine myself as closely as possible to that object, and to seek from Lord Clarendon as frank and full a development as he might be disposed to give at so early a period of the discussion.

Although it was made quite clear that Lord Clarendon considers an adjustment by negotiation practicable, I do not think that he imparted to me a very exact apprehension of his views as to the manner of attaining it. To be sure the conference took rather the character of a preface, a preliminary opening, than that of a precise explanation of objects or plans; but there were occasional suggestions made, and there was a prevading tone throughout all Lord Clarendon said which led me to believe that he either had himself a clew with which to solve each separate difficulty, and would unfold it, or was prepared to accept with candor any effective proposition.

As our conversation opened I remarked that, *his* mind having been long and carefully directed to the details of the subject on which we were entering, and his last letter to me of the 26th instant evincing a

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strong reliance upon negotiation alone, I felt anxious to possess his views. It struck me that we had better avoid entangling ourselves with the former disputations on the subject, and that, as far as we could justly do so, we should consider ourselves at a fresh point of departure with our backs turned to the past. To this he assented. I added that, for the present at least, if not permanently, it would be well to set aside the conflict as to the interpretation of the treaty of 19th April, 1850, on the one hand; and on the other, to forego all reference to the possible resort ultimately to arbitration. Let us see whether, be the construction of the treaty what it may, we cannot discover satisfactory means of removing the separate points of practical difficulty. Lord Clarendon deemed this to be the right course, and entered upon a running colloquial explanation of his views.

1. On the Mosquito question. He said that the British government entertained an anxious and sincere desire to get rid of the protectorate, if they could do so with honor; and having that disposition, it would be really hard if some plan of doing it could not be fixed upon mutually satisfactory.

The *projet* of Mr. Webster and Mr. Crampton, of April, 1852, which Nicaragua had rejected, contained in its first article an arrangement that might, probably, not be so objectionable at this time—that was, to *wall in* the Mosquitos within a prescribed, but sufficient range of territory, and to provide some reasonable income or annuity for the King. Their safety from violence could be assured by guarantees.

It would be necessary that this should be effected, not upon the foundation of their assent—for they were to be considered and treated as infant wards—but in a way to satisfy her Majesty's government that what was done was for their permanent benefit, and a just equivalent for the protectorate.

These Indians had, somehow or other, become the objects of British protection, as long ago as in the time of Charles II, and what had repeatedly been avowed as an obligation of duty and honor, could not now be abandoned until they were placed, in some manner, out of danger.

In reference to grants of land which may have been made to Englishmen, Americans, or others, it would be useless to perplex ourselves with their consideration. That subject might be referred to a commission.

The protectorate withdrawn, what was to be the *status* of San Juan? Why not make it a free city? Could any objection to that arrangement be suggested? Surely the assent of Nicaragua would not be withheld from what could not fail to be of immense advantage to her. The treaty of 1850 seemed to contemplate its being one of the free cities at the two extremities of the ship canal. If the ship canal company had altogether abandoned the idea of executing that work, still there must be a highway or transit of some sort there, over which a large commerce would be conducted, and the treaty would, in spirit at least, apply to it. If we were fortunate enough promptly to settle all the differences between the two countries connected with the treaty of 1850, it might be that capitalists would resume their confidence, and the company be enabled to go on with the ship canal, and not think of reducing that great work to a narrow and merely local accommodation; in which case San Juan would naturally, if not necessarily, be one of the free cities adverted to in the fourth article of the treaty.

If the company gave up the ship canal, then we must determine

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upon one or the other of the proposed routes of interoceanic communication. Mr. Brown (the member of Parliament from Liverpool) had spoken to him about the railway through the State of Honduras, from Porto Caballo to the Bay of Fonseca; and there was the Darien canal, intended to unite the two oceans, in part, by the Atrato river. As to this last mentioned project, he had been compelled by Mr. Kelly, on the expediency of a joint commission of government engineers, to verify explorations and surveys; but he had thought it best to abstain from making the proposition to the United States government lest it might be misinterpreted, and add to already existing complications. He thought, however, that it might be wise to adopt the course suggested.

He repeatedly said, on this matter of the Mosquito protectorate, that there was no room to doubt our being able to dispose of it without arbitration. What, indeed, was there in it to arbitrate. The *locus in quo* of the Indians? The extent of the Mosquito coast? Neither was necessary to the close of the business.

2. Lord Clarendon then asked: What have you to say about Ruatan and the Bay Islands? I hope, was my reply, that you will make up your minds to let them go back to Honduras.

He said it was a hard thing to hand over 3,000 of one's fellow subjects to such a government as Honduras. Why so? I put in. You don't change their homes, their pursuits, their properties, or their rights; they are very distant from England—probably two-thirds of them are wholly indifferent "which king, Bezonian."

But why, he asked, are the United States so much concerned about these islands? Simply, I answered, because they are of a character and in a position which, if they remained in the hands of a great naval and maritime power, might be converted into the means of completely overawing the independence of the Central American States, and of controlling the whole commerce passing through the ship canal or over any other transit. Well, he said, the disposal of these islands is a fit and fair subject for negotiation.

I remarked that there was now in London an official representative or minister from Honduras, whom I presume you have seen. He said yes, he had seen him two or three days ago. There is, I believe, also here a representative from Nicaragua. That, he observed, he was not aware of—what was his name? Mr. Alvarado; of his powers and objects I cannot pretend to speak. His language, which is Spanish, is very partially understood by me, and I have not been able to converse with him. He concluded this branch of our conversation by saying that the presence in London of these two gentlemen, Messrs. Herran and Alvarado, might possibly facilitate our mutual object of adjustment.

3. Lord Clarendon, after a reflecting pause, expressed his belief that there was no other matter on which a comment was necessary. I reminded him of the extension of the Belize settlement, from the Sibun to the Sarstoon, which we considered at variance with treaty stipulations. He really could not see what we had to do with that. It was an affair between England and Honduras. The Belize was now exactly what it was at the formation of the treaty. He hoped that we would not, even in appearance, be ingenious to make difficulties.

I observed that the treaty aimed at putting the two nations in relation to the isthmus on a footing of equality as far as circumstances would permit. We had no possession in those regions, and we were bound to acquire none. Of course it was important to us that British authority and possession should be restricted to their rightful limits. He did not regard it as a matter with which we ought to interfere,

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and he hoped we would not. It was, however, necessary for him to hasten to the House of Lords. We had a good preliminary conference, and he trusted that we should often meet until something definitive was reached.

As I took care to record the features of this interview with Lord Clarendon last night, before anything was allowed to weaken my recollection of them, so I now deem it best to exclude all other topics from the despatch.

The steamer Fulton, which leaves Southampton to-morrow morning, although not remarkable for speed, may yet enable you to receive this a day or two in advance of the arrival of next Saturday's boat.

It is very desirable that I should receive from you at as early a day as possible the "more full and precise instructions for your (my) direction in this complicated affair," promised at the close of your confidential letter of the 27th May, 1856.

I have the honor to be, most respectfully, your obedient servant,

G. M. DALLAS.

Hon. W. L. MARCY,
Secretary of State.

LEGATION OF THE UNITED STATES,
London, June 28, 1856.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States, referring to the concluding paragraph of the letter he had the honor to receive from the Earl of Clarendon, her Majesty's principal secretary of state for foreign affairs, bearing date the 26th of June, 1856, has now the honor to request his lordship to inform him at what time he may be allowed the benefit of an interview.

The undersigned avails himself of the occasion to renew, &c., &c.

G. M. DALLAS.

Right Hon. EARL OF CLARENDON.

FOREIGN OFFICE, *June 29, 1856.*

The undersigned, her Majesty's principal secretary of state for foreign affairs, has the honor to inform Mr. Dallas, envoy extraordinary and minister plenipotentiary of the United States, in reply to his note of yesterday, that he will be happy to receive Mr. Dallas at the foreign office to-morrow, June 30, at 3 o'clock.

The undersigned requests Mr. Dallas to accept the assurance of his highest consideration.

CLARENDON.

G. M. DALLAS, Esq., *&c., &c., &c.*

Mr. Dallas to Mr. Marcy.

[Extracts.]

[No. 19.] LEGATION OF THE UNITED STATES,
London, July 11, 1856.

SIR:

* * * * * * * *

In my last despatch (No. 18) of July 1, 1856, you have the narrative of what occurred at my interview with Lord Clarendon, on

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opening the negotiation for the settlement, if possible, of the differences existing between the two governments respecting the treaty of 1850, and Central America generally.

I now proceed to communicate what has subsequently taken place in connexion with that important matter. The regular progress of the discussion threatened to be suspended by what was said in the House of Commons on the 3d of July. *Mr. H. Baillie* inquired whether "Mr. Dallas had represented to the government that he had full powers to settle the Central American question, or whether he had any other powers than such as had been entrusted to his predecessor? *Lord Palmerston* replied that the government understood that Mr. Dallas had full powers to discuss with them the questions connected with the affairs of Central America, and therefore he had powers which Mr. Buchanan had not."

As I had no powers other than those involved in my letter of credence, or those specially conferred in the concluding paragraph of your No. 13, which I had read to and left in the hands of Lord Clarendon on the 11th of June, and which had been printed and laid upon the tables of the houses of Parliament, and as I had noticed in the newspapers, and in the allusions of public debates, that these powers were variously construed, I thought it prudent to seize the opportunity offered by the publication in the Times of the 4th of July, to avoid as much of future difficulty as possible by an explicit understanding upon the subject. Accordingly I apprized Lord Clarendon by note, that morning, that I would wait upon him at the foreign office the next day.

On Saturday, the 5th of July, at 2 o'clock, I found him prepared to receive me. As he had mentioned that the Cabinet would meet at three o'clock, I drew his attention at once to three slips, cut from as many of the morning journals, purporting to report the short dialogue between Mr. Baillie and Lord Palmerston, which, though slightly different, were substantially to the same effect. He said the reports of the Times were generally the most reliable; and that, had Mr. Baillie's question been put to him, he could have given no better answer than that of Lord Palmerston. He understood my powers to be *powers to discuss*, with a view first to ascertain whether negotiations could effect an adjustment, and, if not, then to arrange the conditions and terms of an arbitration within the limits and on the points distinctly set forth in your despatch to me, No. 13. As far as arbitration was concerned, my powers differed from those of Mr. Buchanan.

I told him that my intrepretation of your instructions was exactly that of Lord Palmerston and himself. As applicable to the differences on Central America, my powers were limited to discussion. I could definitely bind my government to nothing. If we could devise a practicable and promising programme of settlement, it would be reported to you, and must abide your adoption, modification, or rejection; if no such plan could be framed, then, if the subject-matter of disagreement fell within the provisions of your letter No. 13, arbitration might be arranged in the same manner. I begged him clearly to understand that I had no powers on the Central American questions which I had not frankly exhibited; and I added, that, as the cabinet was about to assemble, he had better bring the matter before his colleagues, so that if any one of them conceived it to be expedient and proper that I should have larger or other powers, they might be written for without delay.

Our conversation on this topic lasted until near three o'clock, and Lord Palmerston was announced as in the adjoining room. We have

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not recurred to it since; and I take it for granted that no further explanation is necessary. On rising to go, I was detained a few minutes by Lord Clarendon's remarking, that, as to the project of making San Juan a free city, reserving to Nicaragua her right to have a custom-house a short distance up the river, he hoped we should not differ. I replied that I thought we should not; and I went on to say, that as a feature in a complete scheme of settlement, I saw no insurmountable obstacle in obtaining the adoption by Nicaragua, in her policy and measures respecting the Mosquito Indians, of the principles and practice of the United States in their relations with Indians within their jurisdiction; that they could be assigned a limited district of country for their occupancy, as we had done, west of the Mississippi, with our Florida Indians, and in other cases; that their security from violence could be made reasonably certain; that as to their liability to be overreached or defrauded in purchases of their lands, that also we had a mode of checking; and that the objects we had discussed, once effected, there would be an end to the protectorate, in a manner perfectly compatible with the honor of England. He thought so too; and the size or extent of the district could be easily determined, leaving the rest of the territory to Nicaragua, instead of contracting her front upon the Caribbean Sea to the narrow strip heretofore marked out.

Since this last described conference with the Earl of Clarendon, on the 5th of July, I have thought it would be expedient to give to our discussions, if possible, on each principal subject as it arose, the precision and distinctness, as well as permanency, of written propositions. It appeared to me that we might otherwise incur the risks incident to mere dialogue and differing recollections, and be perpetually traveling over the same points slightly altered. On the purpose now undergoing consideration, that of how best to terminate the protectorate, I sketched a *pro forma* statement of what seemed to me attainable and least objectionable; and in order to pave the way for submitting it to Lord Clarendon as a sort of chart, I addressed to him a note, dated the 7th instant, a copy of which accompanies this despatch, requesting his attention, in connexion with the proposal of making San Juan a free city, to the informal notes which passed between yourself and Mr. Crampton, in the month of May, 1855, and expressing an intention to call on him the following day. This *pro forma* statement was designed to cover the difficulties heretofore encountered, and to remove, if not wholly, at least partially, your objections; to propitiate a more favorable disposition in Nicaragua by contracting the territory set apart for the Indians, by recognizing her eminent domain in the whole, by taking her own plan (in the Hise treaty) of constituting San Juan a free city, and by incorporating the suggestions made by Mr. Marcoleta in 1851. Of course it is imperfect, incomplete, and amendable, but I trust it may be useful. I send you a copy of it.

At the next conference with Lord Clarendon, which I failed in obtaining earlier than the 9th instant, * * * *

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We next entered upon the Mosquito business, and I enquired whether he had been able to turn his mind to the "verbal notes" which had passed between you and Mr. Crampton, in May, 1855, as to constituting San Juan a free city? He regretted that your former views should be referred to, as circumstances had greatly changed. I explained my object to be to avoid, if we could, the obstacles which you had enumerated; that I should entertain very little expectation of obtaining your

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adoption of any scheme in direct conflict with your expressed opinions; that I had drafted a *pro forma* project, in reference to the leading points of the Mosquito question, which attained the substance of what he desired, but in a manner which might possibly be regarded with greater favor than anything heretofore proposed by Nicaragua, by you, by Costa Rica, and indeed by all interested in the settlement of the controversy. I then read the paper to which I have referred, and commented, as I proceeded, on each paragraph, to convey the reasons on which it was founded.

I must confess that I anticipated some animated protest against a plan which put forward, in such strong relief, the recognition of the sovereignty of Nicaragua, as to Mosquitia and San Juan. The mode of making the free city seemed, however, to attract particular, and, I think, favorable notice; and no such protest was uttered. Lord Clarendon, it is true, observed, that as the guarantee of the safety of the Indians was designed to be accomplished through separate treaties, perhaps a difficulty would arise from the fact that although we had recognized the existing government of Nicaragua, they had *not*, and probably would not until better assured of its character and permanency. He said, too, that governments *de facto* might sometimes be immediately recognized by those who were sufficiently near to them to form a prompt estimate of their foundation and durability; and he instanced the overthrow of Charles X, and the early action of the British government in favor of what lasted at least eighteen years; while governments at a distance would take longer to reflect. He was under the impression that Walker was just now in extreme difficulties, and might be forced to fly. I remarked that the projet was independent of Walker; that it was meant for the State of Nicaragua, whoever might be its chief executive or controlling officer; that whether Walker remained or not, was only material to it in one light—that is, if he remained to influence public affairs in Nicaragua, he might be reasonably expected to listen favorably to the advice and recommendation of the government of the United States, by whom the new order of things in Nicaragua had been first recognized. The earl left on my mind an impression that he was not prepared to advance any solid objection, but rather looked upon the scheme, as far as it went, to be fair and plausible. He closed our conversation, however, by saying that I would leave the paper with him, and he would probably put his own ideas in relation to it also in writing. This was, of course, exactly what I wished, to enable me to form a better opinion of the chance of accomplishing a settlement by negotiation, as well as of transmitting to you the views of this government in a precise form on the manner in which the protectorate may be got rid of. I pressed upon him the advantages which I conceived might result from the President being early placed in possession of his views.

The Bay Islands have, thus far, not occupied us. Mr. Herran has been in treaty with Lord Clarendon about their "*devolution*" to Honduras upon conditions and stipulations to which we can take no exception. As this restitution is the only possible manner in which they can cease to be a *sine qua non* impediment to our negotiation, I await the result patiently, but watchfully and anxiously. The newspapers, even the Times, regard their restoration to Honduras as required by justice, and compatible with British honor. Nothing has yet made me doubtful of Mr. Herran's success.

Mr. Alvarado, accredited, as he stated, by Honduras as minister to the United States, is very desirous to help on Mr. Herran by executing a treaty of amity and commerce with us. He thinks the President, if

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made aware of the terms of such a treaty, might be inclined to send myself a full power to execute it here; and he has therefore furnished me a draft of the proposed instrument. It is, word for word, the treaty made by Mr. Squier, on the 3d of September, 1849, with Nicaragua, (which you will find in the Parliamentary Blue Book on Central America, page 73,) only applied to Honduras, omitting the 25th article and the clause numbered 2, in the 36th article; but adding two "*supplementary articles*," a copy of which is annexed to this despatch. I have nothing to say on this subject; quite sure that the President and yourself are the best judges whether or not to entrust me with the full power, in order to have, as far as the circumstances will permit, the general settlement of these Central American affairs executed simultaneously, and, as it were "uno ictu."

* * * * * * * *

With great respect, I have the honor to be, sir, your most obedient servant,

G. M. DALLAS.

Hon. WM. L. MARCY,
Secretary of State.

LEGATION OF THE UNITED STATES,
London, July 7, 1856.

MY LORD: In discussing the several points of practical difficulty in relation to Central America, for the purpose of ascertaining whether existing differences cannot be promptly terminated by direct negotiation, we have considered, in connexion with the project for ending the protectorship of Mosquito, the idea of having San Juan de Nicaragua constituted a free port.

Referring to this topic I must beg your lordship to do me the honor to recall the contents of two verbal notes which passed between Mr. Crampton and Mr. Marcy, in the month of May of last year. The note from Mr. Marcy states destinctly the objections entertained by the government of the United States to the proposal in question; and I would seriously apprehend that, unless these objections can, at least in a measure, be removed, the plan, even as a subordinate feature of a general scheme of adjustment, would not receive the President's sanction.

Entertaining great confidence in your lordship's disposition to surmount the obstacles to arrangement, I am led to hope that, either by an abandonment of the proposal to make San Juan a free city, or by such modifications of that proposal as may render it less liable to the objections urged by Mr. Marcy, in his note of May 9, 1855, the Mosquito question may yet be divested of its complicated character.

Intending to seek the honor of an interview with your lordship at 3 o'clock, p. m., to-morrow, the 8th of July, 1856, if that hour be entirely convenient, and renewing the assurances of my most distinguished consideration, I am your lordship's most obedient servant,

G. M. DALLAS.

[Translation.]

LONDON, *July 10, 1856.*

SIR: The undersigned, in conformity with the reply of which your excellency gave verbally at his communication of the 1st instant, has

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the honor to propose the enclosed bases for a treaty between the United States and Honduras.

They are the same which the United States have adopted in its treaties with the different republics of America, as your excellency will observe; and there are no alterations except by the addition of the supplementary article, which is proposed with a view of opening and protecting interoceanic communication through Honduras. Should the proposed treaty, as it stands, meet the approbation of your excellency, the undersigned is ready to subscribe it on the part of Honduras.

Your obedient servant,

L. ALVARADO.

Pro forma: As to the Protectorate.

I. Demarcation of a district for the Mosquito Indians: Beginning at a point of the main land on the shore of the Caribbean sea, in the 12° parallel of north latitude and 83° 46′ west longitude, running thence due west to the meridian of 84° 15′ west longitude from Greenwich; thence due north on the said meridian to the River Waux; thence down the northern and eastern shore of the said river to the Caribbean sea; and thence southerly along the shore of the said sea, to the place of beginning.

II. The disputed boundary between Nicaragua and Costa Rica, to be adjusted by a commission, on a principle of an equal division of the disputed territory.

III. The river San Juan and the town of San Juan recognized as within the limits and sovereignty of the State of Nicaragua, together with all that has hetetofore been loosely called Mosquitia, lying south and east of the river Waux.

Subject: 1st. As to the district assigned to the Mosquito Indians, to their rights in the soil, and to the other limitations herein expressed.

2d. As to the river and town of San Juan, to the conditions next stated.

IV. Costa Rica to retain for her people the freedom of navigation up and down the river San Juan, from its mouth to the mouth of the Serapiqui river, with liberty to enter and quit the port with their vessels, and to store their cargoes.

V. Nicaragua to constitute and declare San Juan a free city, whose inhabitants shall enjoy the following rights and immunities:

1st. To govern themselves by means of their own municipal government, to be administered by legislative, executive, and judicial officers of their own election, according to their own regulations.

2d. To have the right of trial by jury in their own courts.

3d. Perfect freedom of religious belief and worship, public and private.

4th. Exemption from all taxation on real estate or other property, except such as may be imposed by their municipality and collected for the city treasury to be used and applied for the benefit of the said city.

5th. Exemption from military service except for the defence of the city, always reserving the dominion and government of the State of Nicaragua, not, however, to be exercised in any manner in violation of the rights and immunities thus specified.

VI. Nicaragua to enter into positive treaty stipulations with each of the two governments:

1st. To respect the rights of the Mosquito Indians in the soil of the

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district assigned for their occupation, and to protect them from invasion or violence.

2d. To provide by legal enactments against purchases of their lands, unless first submitted to and approved by the authorities of the State.

3d. To annex, as a condition of the grant of freedom to the city of San Juan, a condition that her municipality shall, as soon as organized, pass laws or ordinances levying, by tax or duty on imposts, a reasonable sum applicable as an indemnity and annuity, for a limited period, to the Mosquito Indians.

VII. This scheme, advisory and recommendatory to Nicaragua and Costa Rica, whose earliest possible attention to it is invoked by both governments.

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MEMORANDUM.

The geographical position of Central America, between the Atlantic and Pacific oceans, gives to that country a special interest in the eyes of commercial nations.

The establishment of adequate lines of interoceanic communication through its territories, by means of railways or canals, or both, is an object of universal importance.

Great Britain and the United States, recognizing its importance, have made it the subject of a special convention, concluded in the year 1850; in article eight of which they establish as a "*general principle*" and agree "*to extend their protection by treaty stipulations*," to all "*practicable communications, whether by canal or railway, across the isthmus which connects North and South America.*"

They also declare that such communications "*being open to the subjects and citizens of Great Britain and the United States, on equal terms, should also be open to the subjects and citizens of every other state which is willing to grant thereto such protection as Great Britain and the United States engage to afford.*

Now, although several lines of interoceanic communication have been designated, each having its earnest supporters, yet it is the opinion of competent judges that the line recently proposed through the State of Honduras, from Puerto Caballos to the bay of Fonseca, possesses signal advantages over any other that has yet been suggested for a railway.

The commission to which its examination was confided, reported that, "*The natural conditions of the country, its general salubrity, and abundant resources, not less than capacious, safe, and altogether unexceptionable harbors, at both extremities, distinguish this line as combining the obvious and primary requisites for an adequate and permanent interoceanic communication.*" And Captain FitzRoy, R. N., in his report to Lord Clarendon on the subject, after a general review of the various routes, concludes, "*that this recently proposed line, through Honduras, appears to him more promising, as a permanently important work, than any other railway yet proposed across the isthmus.*"

To facilitate the construction of a work promising so great advantages, the government of Honduras has conceded a charter, of the most liberal character, to the parties to whose enterprise the world is indebted for the discovery and exploration of the route. This charter recognizes, in their fullest extent, the principles laid down in the convention between Great Britain and the United States. It offers equal facilities to the whole world, and is not encumbered by stipulations

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which might restrict the usefulness of the work, or give to any nation the slightest advantage over another.

This charter, which was ratified by the legislative chambers of Honduras, and proclaimed as a law of the State on the 28th of April, 1854, provides, article 5, section 6, that the government of Honduras shall open negotiations with the various governments with which it may have relations, "*for their separate recognition of the neutrality, and for the protection of the route;*" and "*to prevent any misunderstanding or jealousy,*" it furthermore provides that "*the treaty stipulations, with each and all governments, in respect to the said route, shall be in terms the same.*"

In deference to these indications, the representatives of Honduras, accredited to Great Britain, France, and the United States, have drafted an article which they conceive might be appropriately appended to all treaties of amity and commerce that Honduras may have the good fortune to make with the great maritime powers of Europe and America. In framing it, they have followed out the earnest wish of their government, to concede all useful privileges connected with the proposed transit, to all nations, on equal terms, viz: the recognition of the undisputed sovereignty of Honduras over the line of the road, the guarantee of its neutrality, and its protection against violence and interruption. The government of Honduras does not anticipate that circumstances will ever arise to require any of the powers, which may enter into these stipulations, to give practical force to their guarantees; but it is not to be doubted that the fact of their existence would give to Honduras a great moral support, and contribute to make the proposed route of transit useful and secure.

PROPOSED ARTICLE.

Inasmuch as a contract was entered into by the government of Honduras, and a company entitled the "Honduras Interoceanic Railway Company," for the purpose of constructing a railway from the Atlantic to the Pacific oceans, through the territories of Honduras, which contract was ratified by the constitutional powers of the State, and proclaimed as a law on the 28th day of April, 1854; and since, by the terms of article 5, section 6, of said contract "the government of Honduras, with the view to secure the route herein contemplated from all interruption and disturbance from any cause, or under any circumstances, engages to open negotiations with the various governments with which it may have relations, for their separate recognition of the perpetual neutrality, and for the protection of the aforesaid route." Therefore, to carry out the obligations thus incurred—

1. The government of Honduras agrees that the right of way or transit over such route or road, or any other that may be constructed within its territories, from sea to sea, shall be at all times open and free to the government and subjects [or citizens] of [Great Britain,] for all lawful purposes whatever, and no tolls, duties or charges of any kind shall be imposed on the transit of property belonging to the government of [Great Britain,] or on the public mails sent under authority of the same, nor upon the subjects [or citizens] of [the British crown;] and all lawful produce, manufactures, merchandise, or other property belonging to subjects [or citizens] of [Great Britain] passing from one ocean to the other, in either direction, shall not be subject to any import or export duties whatever, and shall be secure and protected from all interruption or detention, on the part of the State; and

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finally, as an evidence of its disposition to accord to the travel and commerce of the world all the advantages resulting from its position in respect to the two great oceans, Honduras, of her own good will, engages to establish the ports at the extremities of the contemplated road as free ports, for all the purposes of commerce and trade.

2. In consideration of these concessions, in order to secure the construction and permanence of the route or road herein contemplated, and also to secure for the benefit of mankind the uninterrupted advantages of such communication from sea to sea, [Great Britain] recognizes the rights of sovereignty and property of Honduras in and over the line of said road, and for the same reason guarantees positively and efficaciously the entire neutrality of the same, so long as [Great Britain] shall enjoy the privileges conceded to it in the preceding section of this article. And when the proposed road shall have been completed, [Great Britain] equally engages, in conjunction with Honduras, to protect the same from interruption, seizure, or unjust confiscation, from whatsoever quarter the attempt may proceed.

Mr. Dallas to Mr. Marcy.

[Extract.]

[No. 20.] LEGATION OF THE UNITED STATES,
London, July 22, 1856.

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Since my despatch No. 19, I have had no formal interview with Lord Clarendon on the Central American topic. I presumed that after having conferred with his colleagues on the scheme devised for honorably abandoning the Mosquito protectorate, he would apprize me of his readiness to resume the discussion.

Mr. Herran, the minister from Honduras, went to Paris, remaining away for a week, and it also entered into my conception of the true policy of the negotiation that Mr. Herran should come to some definitive arrangement for the restitution of the Bay Islands, before I again pressed Lord Clarendon on the other points. My desire, however, not to lose too much time, impelled me on the 19th instant, to request another conference, and he has appointed to-day at 3 o'clock for our meeting. The copies of these notes are annexed. I shall probably not be able to send you the result by this opportunity. It cannot, however, be important, for I shall take care not to get ahead of the disposition of the island of Ruatan. Mr. Herran returned a few days ago, and has called upon me to let me know the character of his last interview with the Earl of Clarendon. He is quite confident of obtaining the unconditional restoration of the Bay Islands to Honduras; and, indeed, he stated, that having, in conformity with my strenuous inculcation, successfully resisted the proposal to make Ruatan a free port, while he cheerfully embraced the idea of yielding commercial advantages equally to all nations, he was gratified to perceive an acquiescence on the part of the earl, who finally said that the matter should be brought to a close in the course of the ensuing (the present) week. The cabinet held a protracted meeting on Saturday, and it is believed were engaged exclusively upon the American questions. I remain without full and precise instructions; but in case prompt action becomes necessary in order to follow up the restitution

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of the Bay Islands with appropriate and corresponding conclusions on the protectorate, I shall have to draw upon the indulgence of the President and yourself if I assume some measure of responsibility beyond the general written directions of your despatch No. 13, dated the 24th of May, 1856.

I have the honor, to be, sir, most respectfully, your obedient servant,

G. M. DALLAS.

Hon. W. L. MARCY,
Secretary of State.

Mr. Dallas to Lord Clarendon.

LEGATION OF THE UNITED STATES,
London, July 19, 1856.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States, has the honor to request the Earl of Clarendon, her Majesty's principal secretary of state for foreign affairs, to allow him the benefit of an interview at as early a time as may suit his lordship's convenience.

The undersigned renews to his lordship the assurance of his highest consideration.

G. M. DALLAS.

Lord Clarendon to Mr. Dallas.

FOREIGN OFFICE, *July 20, 1856.*

The undersigned, her Majesty's principal secretary of state for foreign affairs, has the honor to acquaint Mr. Dallas, envoy extraordinary and minister plenipotentiary of the United States, in reply to his note of the 19th instant, that he will be happy to have the honor of receiving him at the foreign office on Tuesday next, the 22d instant, at three o'clock.

The undersigned requests Mr. Dallas to accept the assurance of his highest consideration.

Hon. G. M. DALLAS, *&c., &c., &c.*

Mr. Dallas to Mr. Marcy.

[Extract.]

[No. 21.] LEGATION OF THE UNITED STATES,
London, July 31, 1856.

"The interest of political as well as social life in London ceases almost entirely with the circulation and agitation incident to the session of Parliament. I shall therefore probably have very little to write worthy of your attention for some months, apart from the special discussion engaging Lord Clarendon and myself. In that, every effort will be strenuously exerted which an extreme anxiety to close it honorably, effectually, and promptly, can suggest. I have every reason to believe that the negotiation confided by the State of Honduras to Mr. Herran for the restoration of the Bay Islands will soon be suc-

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cessfully ended; and having conceded that much, this government, I cannot but trust, will hasten to the only and great object of that concession by frankly removing the remaining impediments to a perfect and cordial harmony with us.

"I have the honor to be, sir, your most obedient servant,

"G. M. DALLAS.

"Hon. WM. L. MARCY,
Secretary of State."

Mr. Dallas to Mr. Marcy.

[Extracts.]

[No. 23.] LEGATION OF THE UNITED STATES.
London, August 12, 1856.

SIR: * * * * * * * *

In my No. 20, of the 22d ultimo, I apprized you that on that day I was to have another interview with the Earl of Clarendon on the subject of Central America; and my present purpose is to continue the thread of narrative since then suspended.

His lordship, on the 22d of July, was obviously oppressed by labors devolved upon the cabinet at the closing scenes of the parliamentary session. He avowed himself to be so, and I expressed an apprehension that he had probably been unable to give his attention to the matter in discussion between us—that is, the most satisfactory way of extinguishing the Mosquito protectorate. He replied that he had been engaged in examining my memorandum, or sketch, and had made upon the margin of the paper his red ink comments (he held it up), but he had not finished with it. As soon as it was completed he would have a fair copy made, and sent to me; adding, not, however, to transmit to Washington, for it was yet too crude for that, but as a basis for our mutual reflections. Late that evening I received the paper here referred to, with a note from Lord Clarendon, expressing a wish that I would "have the goodness to consider the communication private." To this paper numerous and important modifications were subsequently made by me, and to furnish it would only show one among the many progressive changes of arrangement; while, at the same time, I do not feel, in respect to it, entirely relieved from the injunction of confidence by which its reception was accompanied.

I enclosed, on the 31st of July, to Lord Clarendon a remodelled *projet*, and informed him that I would seek an interview at the foreign office on the following Tuesday. A copy of this plan is sent. He could not meet me on Tuesday, nor on Wednesday; but engaged to return from the Isle of Wight, where her Majesty is residing, by Friday. We met punctually on Friday, and at once entered upon a careful and candid examination of the last paper sent by me.

His lordship objected to my prescribing the river Escondido or Blewfields as the southern boundary of the district assigned to the Indians. His only reason was that it would cut the Indians off from the village or settlement of Blewfields, to which they were accustomed to resort. I explained by preference for a natural boundary over an artificial invisible parallel of latitude, but disclaimed any desire to deprive the Mosquitos of their town. The plan did not do that, if the information I had obtained was correct. To be sure, the maps generally placed Blewfields on the southern bank of the river; but as that

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location unnecessarily exposed it to the easy access of a hostile tribe, the Rama Indians, it had early struck me that there might probably be some error in topographical delineation. I had consulted, fruitlessly, the books descriptive of that region, and was at last obliged to have inquiry made of a gentleman, Don Francisco de Martin, the diplomatic representative of Guatemala at Paris, who stated that he had been at Blewfields, and knew its position well. The inquiry was made through the agency of Mr. Herran, by whom I had been positively assured that the village lay on the north bank of the river, and on the right of a vessel entering it, and who had sent me a note containing a small graphic pen-drawing showing the local relations. I annex a copy of that note. Lord Clarendon observed that at the foreign office they were all under a strong impression that the village of Blewfields was south of the river, but more thorough investigation should be had; and after further discussion, we agreed that the boundary this side of the allotted district should be either the river Blewfields or the river Rama, as the site of the town should be ascertained to be on the north or on the south.

His lordship said it might perhaps be expedient to provide for the creation of a commission to adjudicate upon grants heretofore made *bona fide* by the Mosquitos, of lands lying out of the prescribed limits, and that he would draught a provision to that effect.

Giving, finally, his entire adhesion to my persevering recognition of the sovereign rights of Nicaragua, and to the necessity of having her assent and co-operation, he remarked that there was nothing, in fact, now to embarrass an early execution of this scheme except the actual condition of that republic. It might be doubted whether the United States, by whom the Presidency of Rivas had been recognized, as having sprung from the popular choice, would accept the military usurpation of Walker, which had banished Rivas and his official colleagues. Be that, however, as it might, this government had not recognized, and might not recognize for some time yet, the *de facto* authorities of Nicaragua. There was in this a practical obstacle which he had exercised his ingenuity in the effort to surmount. He had consulted Lord Palmerston, in the hope of catching from him some available suggestion. As yet he did not see his way out of the difficulty; but he would not give it up, and requested me to consider it.

I said that there certainly was an awkwardness in the situation. The revolutionary disturbance in Nicaragua was a *snag* in the way of our amicable progress, but we must get round or overleap it as frankly and as well as we can. Our purpose was, by mutual understanding and agreement, to get rid of all the known grounds of disquietude connected with the treaty of 1850. If the protectorate, from causes over which we could have no control, may not be immediately abandoned, still we might, in the true spirit of amity, fix the mode by which it should be made to cease as soon as practicable. The certainty of its ceasing, now or soon, would be a great point gained in the relations of our two countries. The scheme contrived is marked by tenderness towards the rights of Nicaragua; its execution is dependent upon her assent; that she will be immensely benefitted by it, in a vast variety of ways, no man of reflection can seriously question; and I entertained no doubt that, sooner or later, she could be brought, by a just exercise of the influence and persuasions of the United States, to its adoption. In the meanwhile our two governments, having settled the principles and measures of their own actions, could proceed harmoniously and in co-operation to

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secure their being ultimately carried out. It might possibly be wise, in order to terminate apprehension or jealousy, that the present protectorate should, during that interval only, be converted into a joint one; a proceeding which, besides its bearing as a guaranty to each government of the great treaty object of neutrality, could not fail to leave its impression upon those who doubted their firmness or sincerity in the arrangement.

The topic was left with an understanding that each of us would try his hand at moulding a clause by which the impediment springing out of the disturbed state of Nicaragua might be removed.

* * * * * * * *

As his lordship paused, I suddenly asked him how he got on with Mr. Herran? and he replied unhesitatingly that he believed that matter was satisfactorily settled; that he had draughted, or would draught, the convention, and intended sending for Mr. Herran in the course of the afternoon. I put the question frankly, whether, in settling the terms of the convention, he had avoided all provision, direct or indirect, for exclusive commercial or other privileges? and he answered "undoubtedly." I then took leave.

On Sunday Mr. Herran called to report progress. He brought with him the draught of a convention between this government and Honduras, which he had received from Lord Clarendon. I read the paper attentively. It covers several objects respecting claims, on both sides, for alleged injuries, and land grants with which we have no concern, and is therefore longer than I expected to find it. As regards the Bay Islands it was an agreement that they should be constituted and declared *a free state under the sovereignty of Honduras;* and the present British residents, if made sufferers by the change, were to be indemnified through the agency of a mutually chosen commission by the republic. Although not the "restitution" which, in my opinion, would have squared best with the magnanimous policy of a powerful nation dealing with a feeble one, I could discover nothing in it which called for the opposition of the United States, if Honduras was content. But I advised Mr. Herran, on behalf of his own country, to urge upon Lord Clarendon the expediency and justice of contracting his object from a *free state*, embracing all the five islands, to a *free city*, that of Port Royal in Ruatan, leaving to Honduras the prospect of realizing some small revenue by the sales of lands now wild and uninhabited. The extent of the free city, occupied by a population, two-thirds of whom were blacks and Indians, could also be advantageously fixed; and I gave him a written memorandum of my suggestions, so that he might confer upon them with his friends and advisers.

I have just received by the steamship Niagara your Nos. 23 and 24, dated respectively the 26th and 28th of July, and I am happy to know that, as far as this interesting negotiation on Central American affairs has been conducted to its proximate close by me, "there is no conflict between what I have done and the President's views." The instructions you have given are in perfect accord with the conclusions of my own judgment, on which I have ventured to proceed; and they augment my confidence that in a short time the difficulties which threatened to dissolve the peaceful relations of the United States and Great Britain will be adjusted honorably and satisfactorily.

* * * * * * * *

I have the honor to be, most respectfully, your obedient servant,

G. M. DALLAS.

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Demarcation of a territory for the Mosquito Indians, to be bounded on the north by the river *Herbias*, Waux or *Segovia*, on the south by the river *Escondido or Blewfields*, and on the west by a line drawn down the meridian of 84° 15′ west longitude from Greenwich, and extending from the river Waux to the river *Blewfields*. The western boundary to be fixed and designated by commissioners named by Great Britain and the United States, *with the assent of Nicaragua;* and if in making the survey there should be discovered any natural boundary within *fifteen English miles* of the imaginary longitudinal line, on the *western* side of such imaginary line, *and extending the whole distance from the river Waux to the river Blewfields*, it shall be the duty of the commissioners to report the same, and such natural boundary shall be adopted instead of the artificial one.

The Mosquito Indians, confining themselves within the prescribed territory, to enjoy the right, by their national council or councils, to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within the same, belonging to their people or to such persons as have connected themselves with them; their rights of property and of local government, within the prescribed territory, to be recognized, affirmed, and guarantied by Nicaragua in treaties, to be made between that State and Great Britain and the United States, respectively; and Nicaragua, in each of those treaties, to stipulate and engage that she will enact laws to prevent the purchase of lands from the Mosquito Indians without official sanction, and the introduction and sale of spirituous liquors among the said Indians; that she will not molest or otherwise interfere with the said Indians; but that she will protect them from all inroads, intrusions, or aggressions along their western frontier.

The Mosquito Indians shall not be able to cede their territory or rights to any other State without the consent of Great Britain and of the United States, by each separately expressed; it being, however, understood that nothing shall preclude the conclusion of such voluntary compact and arrangements between the State of Nicaragua and the Mosquito Indians, by which the latter may be definitively incorporated and united with the former, it being stipulated that in such case the said Mosquito Indians shall enjoy the same rights and be liable to the same duties as the other citizens of the said State of Nicaragua.

The rest of the territory to be recognized and declared to be within the limits and sovereignty of Nicaragua, on the following conditions:

1. Costa Rica is to retain for her people the freedom of navigation up and down the River San Juan from its mouth to the mouth of the Serapiqui river, with liberty to enter and quit the port with their vessels, and to store their cargoes; and furthermore, Nicaragua is to allow the other territorial disputes between herself and Costa Rica, if the same cannot be amicably adjusted between themselves, to be settled by the arbitration of Great Britain and the United States, who, in any doubtful point, shall be able to call for the decision of a third party.

2. All *bona fide* grants that have been made by the government of Mosquito of lands heretofore possessed by the said Indians, and lying beyond the limits of the prescribed territory, to be confirmed.

3. Nicaragua to constitute and declare the port of Greytown, or San Juan, a free port, and the city a free city, (though under the sovereign

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authority of Nicaragua,) whose inhabitants shall enjoy the following rights and immunities, viz:

To govern themselves by means of their own municipal government, to be administered by legislative, executive, and judicial officers of their own election, according to their own regulations;

To have the right of trial by jury in their own courts;

To possess perfect freedom of religious belief and worship, public and private; and to enjoy exemption from all taxation on real estate or other property, except such as may be imposed by their own municipality and collected for the city treasury, to be used and applied for the benefit of the said city; and also,

To enjoy exemption from military service, except for the defence of the city.

Nicaragua to enter into positive treaty stipulations with each of the two governments of Great Britain and the United States, to annex, as a condition of the grant of freedom to the city of Greytown, or San Juan, a condition, that her municipality shall, as soon as organized, pass laws and ordinances levying, by tax or duty on imports a reasonable sum, applicable as an indemnity and annuity for a limited period to the Mosquito Indians.

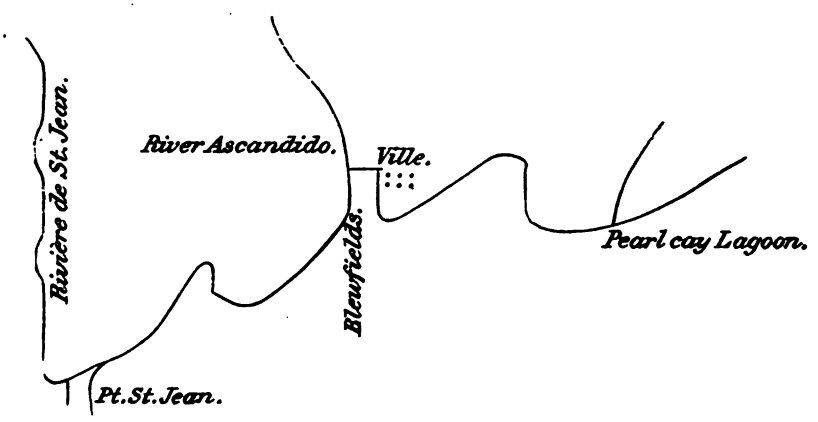
This scheme to be proposed to Nicaragua and Costa Rica, the governments of Great Britain and the United States binding themselves, should Nicaragua or Costa Rica refuse to accept the same, not to propose or consent to any other more favorable to the recusant party.

[Translation.]

LONDON, *July 29, 1856.*

I have the honor of transmitting to you the information which you have requested of me, in relation to the location of Blewfields; the houses are situated on the right, ascending the river.

Here you have the location approximately:



I beg that you will accept the assurance of my high consideration.

HERRAN.

Mr. DALLAS.

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Mr. Dallas to Mr. Marcy.

[Extract.]

LEGATION OF THE UNITED STATES,
London, August 15, 1856.

SIR: * * * * * * * *
I had hoped to be able to communicate by this opportunity the final results attained upon the Central American question.

At the close of my conference with Lord Clarendon yesterday, as it seemed to both of us that we had completed the *projet* providing a mode by which an end could be put to the Mosquito protectorate acceptable to the honor of England, he undertook to have the whole arrangement reduced to form by Mr. Hammond, and a copy sent me. I presume I shall not receive that paper in time for transmission to-day; nor, indeed, am I anxious to hasten its departure for Washington without first giving it a careful reconsideration.

It may, I think, be expected at furthest by the Persia of to-morrow week. Lord Clarendon assured me, in reply to an inquiry, that a convention had been entirely settled with Mr. Herran, giving, in fact, the Bay Islands to the world as a free State *or municipality, under the sovereignty of Honduras.* It appeared that the term *free State* was, in the estimation of Mr. Herran, irreconcilable with the constitution of the republic, and it would be charged to any other in greater harmony. The convention would be drafted and signed without delay. I shall, of course, obtain and forward a copy as soon as possible.

There is left then, of these formidable difficulties, the Belize alone. Lord Clarendon has avoided, since our first interview, any allusion to that; no doubt supposing it would not be regarded as sufficiently important to be pressed upon the British government, if the other points were adjusted. Still I consider our object, at least respecting the Belize, worthy of definite settlement—its actual extent (exclusive of dependencies) at the time Mr. Clayton and Sir Henry Bulwer agreed that it was not embraced by the treaty, and beyond which extent it cannot expand by acquisition of or encroachment upon Guatemala, consistently with the purpose and terms of that treaty. * * *

Mr. Dallas to Mr. Marcy.

[Extract.]

[No. 25.] LEGATION OF THE UNITED STATES,
London, August 22, 1856.

SIR: * * * * * * * *
I abstain from resuming the narrative of progressive advances in the discussion on the affairs of Central America, because, having reached the point at which the treaty, *as a whole*, is under consideration, I am in daily expectation of being able to transmit it, finished, for the revisory action of the President and yourself. The distractions necessarily incident to the absence of the Queen at the Isle of Wight, and to the holiday jaunts of most of her ministry, may prevent the formal completion of the instrument. Otherwise, I can perceive no reason why it should not be forwarded to you by the steamship

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Arabia on the 30th instant, exactly two months after its negotiation began.

I have the honor to remain, your most obedient servant,

G. M. DALLAS.

Hon. WILLIAM L. MARCY,
Secretary of State.

Mr. Dallas to Mr. Marcy.

[Extract.]

[No. 26.] LEGATION OF THE UNITED STATES,
London, August 29, 1856.

SIR: * * * * * * * *

In forwarding, as I now do, the draft of the treaty resulting from the discussions had between her Majesty's principal secretary of state for foreign affairs and myself during the last two months, I have only to express the confident expectation that it will meet the adoption of the President.

A determination to reach an arrangement which should put an end to differences that have heretofore threatened the friendly relations of the two countries, and which would leave the treaty of the 19th of April, 1852, to operate practically in the spirit and for the purposes of its original formation, has been frankly and steadily manifested throughout the negotiation.

Nothing short of such a vigorous will could have found a way out of the complications and entanglements with which the subject was surrounded.

Indeed one of the principal features of the finally adjusted plan, dealing as it of necessity must with the asserted claims of a third state, and anxiously moulded as it has been in all possible deference to the rights and honor of that state, may yet be frustrated by failing to conciliate assent. I cannot but cherish an ardent hope that the republic of Nicaragua will perceive that in attaining an object of paramount importance to herself, and to all Central America, namely, the voluntary relinquishment by Great Britain of the pretension and practice to protect, by forcible means, the Mosquito Indians, her permanent and essential interests, her peace, her territory, her commerce, and her independence can undergo no real diminution. Such an object, achieved by the firmness of the United States, can hardly fail to be considered by the statesmen and people of that rising and interesting community as ample compensation for the ideal and temporary sacrifices she is asked to make.

Duplicates of the treaty were signed and sealed at the foreign office, on Wednesday, the 27th instant, at half-past 7 o'clock, and one of them left with each negotiator, for submission to his government.

* * * * * * * *

MEMORANDUM.

The undersigned, the envoy extraordinary and minister plenipotentiary of the United States of America at London, and her Britannic Majesty's principal secretary of state for foreign affairs, having dis-

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cussed the various questions at issue between the governments of Great Britain and of the United States relative to Central America, have agreed upon the annexed draft of a treaty and separate articles, which they are of opinion contain a settlement of those questions fair and honorable to both parties, and which they accordingly recommend to their respective governments.

G. M. DALLAS. [L. S.]
CLARENDON. [L. S.]

LONDON, *August 27, 1856.*

Draft of Treaty between Great Britain and the United States of America, August 25, 1856.

Her Majesty, the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America, being desirous to settle in a friendly manner the questions which have come into discussion between them relative to Central America, have resolved to conclude a treaty for that purpose, and have named as their respective plenipotentiaries, that is to say: Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, &c., &c., and the President of the United States of America, &c., &c., who, after communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

ARTICLE I.

Her Britannic Majesty and the United States of America agree jointly to propose to the republics of Nicaragua and of Costa Rica the arrangements contained in the following articles.

ARTICLE II.

A territory comprised within the following limits shall be set apart for the Mosquito Indians: The boundary line shall begin at the mouth of the river Rama, in the Caribbean sea; thence it shall run up the mid course of that river to its source, and from such source proceed in a line due west to the meridian of 84° 15′, longitude west from Greenwich; thence due north up the said meridian until it strikes the river Waux or Segovia, and down the mid course of that river to its mouth in the sea at Cape Gracias á Dios, and thence southerly along the shore of the Caribbean sea to the mouth of the river Rama, the point of commencement.

The inland boundary shall be designated and marked out by two commissioners, to be appointed, one by her Britannic Majesty, and one by the president of the republic of Nicaragua.

If, in making the survey for this purpose, there should be discovered any natural boundary, within fifteen English miles of the above mentioned meridian line, on the western side of such meridian line, and extending the whole distance from the river Wanœ to the parallel of the river Rama, it shall be the duty of the commissioners to report the same; and such natural boundary shall be adopted, instead of the astronomical one.

ARTICLE III.

The Mosquito Indians, confining themselves within the territory designated by the preceding article, shall enjoy the right to make, by

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their national council or councils, and to carry into effect, all such laws as they may deem necessary for the government and protection of all persons within the same, and of all property therein belonging to their people, or to such persons as have connected themselves with them. Their rights of property and of local government within the territory defined, as described in the preceding article, shall be recognized, affirmed, and guaranteed by the republic of Nicaragua in treaties to be made by that State with Great Britain and the United States, respectively; and the republic of Nicaragua in each of those treaties shall stipulate and engage that it will enact laws to prevent the purchase of lands from the Mosquito Indians, and the introduction and sale of spirituous liquors among the said Indians; and that the republic will protect them from all inroads, intrusions, or aggressions along their western frontier.

The Mosquito Indians shall not be able to cede their territory or rights to any other State without the consent of Great Britain and the United States, by each separately expressed; it being, however, understood that nothing shall preclude the conclusion of such voluntary compact and arrangements between the republic of Nicaragua and the Mosquito Indians by which the latter may be definitively incorporated and united with the former, but it shall be stipulated in such case that the said Mosquito Indians shall enjoy the same rights and be liable to the same duties as the other citizens of the said republic of Nicaragua.

ARTICLE IV.

The rest of the territory hitherto claimed as belonging to the Mosquito Indians south of the river Waus or Segovia, west of the line to be drawn southward from the said river to the parallel of the river Rama, and south of the said parallel and of the river Rama, shall be recognized and declared to be within the limits and sovereignty of the republic of Nicaragua on the following conditions:

1. The republic of Costa Rica shall retain for its citizens the freedom of navigation up and down the river San Juan from its mouth to the mouth of the Serapiqui river, with liberty to enter and quit the port of San Juan or Greytown with their vessels, and to store their cargoes in that port.

2. The republics of Nicaragua and of Costa Rica shall allow the territorial disputes between them (if the same cannot be amicably adjusted between themselves) to be settled by the arbitration of Great Britain and the United States of America, who, in any doubtful point, shall be able to call for the decision of a third party.

3. All *bona fide* grants that have been made by the government of Mosquitia of lands heretofore possessed by the said Indians, and lying beyond the limits of the prescribed territory, shall be confirmed.

4. The republic of Nicaragua shall constitute and declare the port of Greytown, or San Juan, a free port, and the city a free city, (though under the sovereign authority of the republic,) whose inhabitants shall enjoy the following rights and immunities:

A.—The right to govern themselves by means of their own municipal government, to be administered by legislative, executive, and judicial officers of their own election, according to their own regulations.

B.—Trial by jury in their own courts.

C.—Perfect freedom of religious belief and of worship, public and private.

D.—Exemption from all duties of customs, and from all taxation on

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real estate or other property, except such duties and taxes as may be imposed by their own municipality and may be collected for the city treasury, to be used and supplied for the benefit of the said city.

E.—Exemption from military service, except for the defence of the city and within the bounds of the same.

ARTICLE V.

The republic of Nicaragua shall enter into positive treaty stipulations with each of the two governments of Great Britain and of the United States of America, that it will make the grant of freedom to the city of Greytown, or San Juan, subject to the condition that the municipality of the said city shall, as soon as organized, pass laws and ordinances levying, by tax or duty on imports, some reasonable sum, to be paid half-yearly to the Mosquito Indians by way of annuity for a limited period, as an indemnity and compensation for their interest in the territory recognized and declared by the first clause of article four to be within the limits and sovereignty of the republic of Nicaragua.

ARTICLE VI.

Her Britannic Majesty and the republic of Nicaragua shall, within months after the exchange of the ratifications of the treaty to be concluded between them, in virtue of the present arrangements, appoint each a commissioner for the purpose of designating and working out the inland boundary separating the territory to be set apart for the Mosquito Indians, as described in article two of the present treaty, from the rest of the territory of the republic.

They shall also appoint, within the same period, each a commissioner for the purpose of deciding upon the *bona fides* of all grants of land mentioned in section three of article four of the treaty, as having been made by the government of Mosquitia, of lands heretofore possessed by the Mosquito Indians, and lying beyond the limits of the territory described in article two.

They shall further appoint, within the same period, each a commissioner for the purpose of determining the amount, the period of duration, and the time, place, and mode of payment of the annuity to be paid to the Mosquito Indians, according to the stipulations of article five of the present treaty.

Her Britannic Majesty and the republic of Nicaragua shall be at liberty either to name the same person to fulfil the duties of commissioner for all three, or for any two of the purposes above described, or to name a separate and distinct person to be commissioner for each purpose, as they may see fit.

ARTICLE VII.

The commissioners mentioned in the preceding article, shall meet at such place or places as shall be hereafter fixed, at the earliest convenient period after they shall have been respectively named; and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment and according to justice and equity, without fear, favor, or affection to their own country, upon all the matters referred to them for their decision; and such declaration shall be entered on the record of their proceedings.

The commissioners shall then, and before proceeding to any other

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business, name some third person to act as arbitrator or umpire, in any case or cases in which they may themselves differ in opinion. Each pair of commissioners shall separately name the person so to act as their arbitrator or umpire. The person or persons so to be chosen shall, before proceeding to act, make and subscribe a solemn declaration, in a form similar to that which shall already have been made and subscribed by the commissioners, which declaration shall also be entered on the record of the proceedings. In the event of the death, absence, or incapacity of such person or persons, or of his or their omitting, or declining, or ceasing to act as such arbitrator or umpire, another person or other persons shall be named as aforesaid, to act in his or their place or stead, and shall make and subscribe such declaration as aforesaid.

Her Britannic Majesty and the republic of Nicaragua shall engage to consider the decision of the two commissioners conjointly, or of the arbitrator or umpire, as the case may be, as final and conclusive on the matters to be respectively referred to their decision, and forthwith to give full effect to the same.

ARTICLE VIII.

The commissioners and the arbitrators or umpires shall keep accurate records and correct minutes or notes of all their proceedings, with the dates thereof, and shall appoint and employ such clerk or clerks or other persons as they shall find necessary to assist them in the transaction of the business which may come before them. The salaries of the commissioners shall be paid by their respective governments. The contingent expenses of the commissions, including the salary of the arbitrators or umpires, and of the clerk or clerks, shall be defrayed in equal moieties by the two governments.

ARTICLE IX.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the United States of America bind themselves, in case the republics of Nicaragua and of Costa Rica, or either of them, should refuse to accept the arrangements contained in the preceding articles, not to propose nor consent to any other arrangements more favorable to the refusing party or parties.

ARTICLE X.

The present treaty shall be ratified by her Brittannic Majesty, and by the President of the United States of America, by and with the advice and consent of the Senate thereof, and the ratifications shall be exchanged at ——— as soon as possible within the space of ——— months.

In witness whereof, &c.

SEPARATE ARTICLES.

ARTICLE I.

Whereas the arrangements set forth in the treaty of this date are provided as an adequate substitute for the protection heretofore extended by Great Britian to the Mosquito Indians; and whereas one or the other, or both of the contracting parties may find in the con-

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dition of their political relations with the republic of Nicaragua obstacles to prevent an immediate execution of the said arrangements: Now, therefore, it is agreed and understood as follows:

1. That any delay in carrying out the said arrangements, arising from the circumstances or relations of the republic of Nicaragua, shall in no respect impair the validity or force of the treaty, as between the contracting parties; but the same shall remain obligatory upon and to be executed by them as early as may be practicable.

2. That whichever of the two contracting parties may soonest find itself in such political relations with the republic of Nicaragua as enable it so to do, shall first propose singly to that republic the arrangements contained in this treaty, and shall obtain, by means of a separate treaty, its assent to those arrangements; the other contracting party engaging, and reserving to itself the right also to conclude with the said republic, at the earliest fitting moment, a treaty containing the said arrangements.

ARTICLE II.

And whereas the relations of amity between the contracting parties, and the neutrality of any and every communication by canal or railway across the isthmus which connects North and South America, and to which communication by canal or railway their protection has been, or shall be extended, may be further assured by some definite arrangement on two other questions which have come into discussion: Now, it is mutually agreed and understood—

1st. That her Britannic Majesty's settlement called the Belize, or British Honduras, on the shores of the Bay of Honduras, bounded on the north by the Mexican province of Yucatan, and on the south by the river Sarstoon, was not, and is not embraced in the treaty entered into by the contracting parties on the 19th day of April, 1850; and that the limits of the said Belize on the west, as they existed on the said 19th of April, 1850, shall be settled and fixed by treaty between her Britannic Majesty and the republic of Guatemala, within year from the exchange of the ratifications of this instrument; which said boundaries and limits shall not at any time hereafter be extended,

2. That the islands and their inhabitants, of Ruatan, Bonacea, Utila, Barbaretta, Helena and Morat, situate in the Bay of Honduras, and known as the Bay Islands, having been by a convention bearing date the day of , 1856, between her Britannic Majesty and the republic of Honduras, constituted and declared a free territory under the sovereignty of the said republic of Honduras, the two contracting parties do hereby mutually engage to recognize and respect in all future time the independence and rights of the said free territory, as a part of the republic of Honduras.

ARTICLE III.

The present separate articles shall have the same force and validity as if they had been inserted, word for word, in the treaty between her Britannic Majesty and the United States of America, signed this day.

They shall be ratified by her Britannic Majesty and by the President of the United States, by and with the advice and consent of the Senate thereof, and the ratifications shall be exchanged at the same time as those of the treaty.

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In witness whereof, the respective plenipotentiaries have signed the present separate articles, and have affixed thereto the seal of their arms.

Done, &c.

Mr. Dallas to Mr. Marcy.

[Extract.]

[No. 29.] LEGATION OF THE UNITED STATES,
London, October 10, 1856.

SIR: Your Nos. 30 and 31 reached here, by the steamer Atlantic, late in the afternoon of yesterday. The first is accompanied by the commission of Mr. George R. West, as consul of the United States at the Bay of Islands; and the second confined to the subject of the *project* prepared, agreeably to the directions of our respective governments, by the Earl of Clarendon and myself, the duplicate copy of which was transmitted in my No. 26, of the 29th of August last, is accompanied by the President's commission or full power to negotiate and sign a treaty concerning Central America, and by a "*confidential*" letter from the department.

Both these communications will receive my earliest attention; and the importance of perfecting the Central American treaty, as speedily as may be compatible with the magnitude and delicacy of its arrangements, will not be lost sight of. Be good enough to convey to the President, and to receive for yourself, my sincere thanks for the appreciation expressed of the "judgment and skill" with which the negotiation has thus far been conducted. I shall feel better entitled to this favorable opinion when the improvements suggested in your letter have been successfully urged upon the adoption of Lord Clarendon * * * * * *

Mr. Dallas to Mr. Marcy.

[No. 30.] LEGATION OF THE UNITED STATES.
London, October 17, 1856.

SIR: I have the honor to transmit a treaty between the United States and Great Britain, embracing an adjustment of all their differences heretofore existing connected with Central America, executed this day by me, under the full power dated the 25th of September, 1856, and received on the 9th instant.

The *project* or draught of this treaty, as discussed and finally agreed to be recommended to our respective governments by her Majesty's principal secretary of state and myself, was forwarded for the consideration of the President, in my No. 26, of the 29th of August last. The modifications of that *project*, indicated as desirable in your No. 31, it has been my good fortune to obtain in the course of a single week, with but one unimportant exception. A few changes in phraseology, and in merely accessorial provisions were necessary, and have been made to secure adaptation and congruity as between the improvements and the original draught. A full and frank interchange of views between Lord Clarendon and myself on the omitted suggestion, led to the belief that it was of a nature liable to misapplication and abuse.

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You will, I am sure, excuse me for now expressing a strong hope that I may be permitted to hear with little delay the President's judgment upon the entire instrument.

The formalities at the foreign office in perfecting the duplicate copies consumed so much time that I have none to spare for comment. Should it seem to me at all important or useful that any part of the treaty receive explanation as to its motive or tendency, a future opportunity will be taken for that purpose.

I have the honor to be, most respectfully, sir, your obedient servant,

G. M. DALLAS.

Hon. WM. L. MARCY,
Secretary of State.

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SENATE EX. DOC. 194, OF THE 47TH CONGRESS, 1ST SESSION.

THE CLAYTON-BULWER TREATY

AND

THE MONROE DOCTRINE.

A LETTER

FROM

THE SECRETARY OF STATE

TO

THE MINISTER OF THE UNITED STATES AT LONDON

DATED MAY 8, 1882,

WITH SUNDRY PAPERS AND DOCUMENTS EXPLANATORY OF THE SAME, SELECTED FROM THE ARCHIVES OF THE DEPARTMENT OF STATE.

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MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING,

In response to the Senate resolution of the 15th of July, 1882, a report of the Secretary of State and accompanying papers relating to the Clayton-Bulwer treaty.

AUGUST 3, 1882.—Read and referred to the Committee on Foreign Relations.
AUGUST 4, 1882.—Ordered printed.

To the Senate of the United States:

I transmit herewith, in response to the Senate resolution of the 15th instant, a report of the Secretary of State and accompanying papers relating to the Clayton-Bulwer treaty.

CHESTER A. ARTHUR.

EXECUTIVE MANSION,
Washington, July 29, 1882.

To the President:

The Secretary of State, to whom was referred the resolution of the Senate of the 15th instant, requesting the President, "if not incompatible with the public interest, to furnish the Senate with copies of the declaration of Sir Henry Lytton Bulwer and Mr. Clayton on the exchange of the ratifications of the Clayton-Bulwer treaty on the 4th day of July, 1850, and any other documents referred to in the instruction of Mr. Frelinghuysen to Mr. Lowell dated the 8th day of May, 1882," has the honor to lay before the President, for transmission to the Senate in response to the resolution, the accompanying copy of the declaration of Sir Henry Bulwer and Mr. Clayton described therein, together with a selection of such other documents cited in the instruction of May 8 to Mr. Lowell as seem to come within the purview of the resolution.

Respectfully submitted.

FRED'K T. FRELINGHUYSEN.

DEPARTMENT OF STATE,
Washington, July 29, 1882.

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I.

NOTE.

Mr. Frelinghuysen to Mr. Lowell.

No. 368.] DEPARTMENT OF STATE,
Washington, D. C., May 8, 1882.

SIR: Mr. Sackville West has handed me copies of two dispatches from Lord Granville to him respecting the Clayton-Bulwer treaty; the first, dated 7th January last, comments upon Mr. Blaine's 270 of the 19th of November; the second, of the 14th January, comments upon Mr. Blaine's 281 of the 29th November.

They have been read with interest and with attention. After careful consideration, the President is not without hope that the views of the two governments may be harmonized in this matter. He therefore directs me to communicate to you, somewhat at length, the opinions entertained here respecting the traditional continental policy of the United States and the Clayton-Bulwer treaty.

A canal across the isthmus for vessels of all dimensions and every character, under possible conditions hereinafter referred to, would affect this republic in its trade and commerce; would expose our Western coast to attack; destroy our isolation; oblige us to improve our defenses and to increase our Navy, and possibly compel us, contrary to our traditions, to take an active interest in the affairs of European nations. The United States, with their large and increasing population and wealth, cannot be uninterested in a change in the physical conformation of this hemisphere which may injuriously affect either the material or political interests of the republic, and naturally seek that the severance of the isthmus connecting the continents shall be effected in harmony with those interests. This government, while believing that the isthmus should not be severed so as to do unnecessary injury to the United States, at the same time appreciates the desire of Great Britain that she should be able, by a short and easy passage from ocean to ocean, to reach her eastern and American possessions on the Pacific, and that other nations of the world have a similar interest in such a passage.

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There is, however, no necessary conflict between the political claims of the United States in this matter and the material interests of other nations.

A canal across the isthmus can be created, and under the protectorate of the United States and the republic whose territory it may cross, can be freely used by all nations; thus in some degree would be continued to the United States the benefit of that conformation of the earth which is now an element of security and defense.

For thirty years the Panama Railroad has been maintained without other protection than that of the United States and the local sovereign, in accordance with the treaty of 1846 with New Grenada.

During that period Great Britain has carried to a successful result the wars of the Crimea and the Indian mutiny; France has three times convulsed Europe with strife; a conflict between Russia and Turkey has changed the face of the Ottoman Empire; thrones have crumbled; empires have been constructed; republics have arisen, while on this continent the most remarkable civil war in history has occurred, and at the same time the Emperor of the French was lending his active support to an aspirant for imperial honors in the neighboring republic of Mexico. Within that period almost every form of war and strife have taken place that would seem to make especially necessary the neutralization of the isthmus, and yet the trains of the Panama Railroad have run from ocean to ocean peacefully and with no other interruption than what has come from the rare turbulence of the local population.

During the same time another isthmus has been pierced, and while wars have raged within sight of the Mediterranean port the peaceful commerce of the world has moved through the Suez Canal quietly and safely under no international protectorate.

If no guarantee or protectorate has been found necessary during such troubled times, it can scarcely be required in the more peaceful period which both the Government of the United States and that of Great Britain hope and strive for.

The President, therefore, considers it unnecessary and unwise, through an invitation to the nations of the earth, to guarantee the neutrality of the transit of the isthmus, or to give their navies a pretext for assembling in waters contiguous to our shores, and to possibly involve this republic in conflicts from which its natural position entitles it to be relieved.

It will doubtless occur to Lord Granville, as it does to us, that in-

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ternational agreements of this kind calling for interference by force, and conferring joint rights upon several independent powers, are calculated to breed dissension and trouble. In times of peace, when there is no call for their exercise, they are harmless though useless. But when wars and trouble come, it too frequently happens that differences arise, and so at the very moment when the agreement should be enforced it is impossible to enforce it; and such agreements would lead to that political intervention in American affairs which the traditional policy of the United States make it impossible that the President should either consent to or look upon with indifference.

The President believes that the formation of a protectorate by European nations over the isthmus transit would be in conflict with a doctrine which has been for many years asserted by the United States. This sentiment is properly termed a doctrine, as it has no prescribed sanction and its assertion is left to the exigency which may invoke it. It has been repeatedly announced by the Executive Department of this Government and through the utterances of distinguished citizens; it is cherished by the American people, and has been approved by the Government of Great Britain.

It is not the inhospitable principle which it is sometimes charged with being and which asserts that European nations shall not retain dominion on this hemisphere and that none but republican governments shall here be tolerated; for we well know that a large part of the North American continent is under the dominion of Her Majesty's Government, and that the United States were in the past the first to recognize the imperial authority of Dom Pedro in Brazil and of Iturbide in Mexico. It is not necessary now to define that doctrine, but its history clearly shows that it at least opposes any intervention by European nations in the political affairs of American republics.

In 1823, Mr. Canning, with the concurrence of the cabinet of London, informed Mr. Rush that Great Britain could not see with indifference the intervention of foreign power in Spanish America, or the transfer to those powers of any of the colonies, and suggested a joint declaration to that effect by the United States and Great Britain. This suggestion grew out of the relations then existing between France and Spain, their attitude towards the South American republics then struggling for independence, and the injuries to the colonies and commerce of Great Britain which would result from a successful prosecution of the policy of those two governments. President Monroe did not adopt

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the proposal for a joint declaration, but in his message of December 2, 1823, after stating that it was our policy not to interfere with the internal concerns of European powers, speaking of the war which the revolted colonies were carrying on against Spain, and of contemplated interference by the "Holy Alliance" in behalf of the latter, said, in language which has gone into history under his name, thus:

> But in regard to these continents circumstances are eminently and conspicuously different. It is impossible that the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness, nor can any one believe that our southern brethren, if left to themselves, would adopt it of their own accord. It is equally impossible, therefore, that we should behold such interposition in any form with indifference.

This sentiment was received in England with enthusiasm. Mr. Brougham said:

> The question in regard to Spanish America is now, I believe, disposed of or nearly so; for an event has recently happened than which none has ever dispensed greater joy, exultation, and gratitude over all the freedmen of Europe; that event which is decisive on the subject is the language held with respect to Spanish America in the message of the President of the United States.

Sir James Mackintosh said:

> This evidence of the two great English commonwealths (for so I delight to call them, and I heartily pray that they may be forever united in the cause of justice and liberty) cannot be contemplated without the greatest pleasure by every enlightened citizen of the earth.

Mr. John Quincy Adams, who well knew what had led to these statements by Mr. Monroe, explained in a message to the House of Representatives on the 17th day of March, 1826, that there was no purpose of interfering with the existing European colonies in America; that the language was only a frank declaration that the United States could not look with indifference either upon an attempt by colonization to close any port of the continent against the commerce of the United States or upon concerted political interference from Europe in American affairs.

Thus the doctrine of non-intervention by European powers in American affairs arose from complications in South America, and was announced by Mr. Monroe on the suggestion of the official representative of Great Britain.

The doctrine so formulated by Monroe and expounded by Adams has since remained a cardinal principle of our continental policy. In several notable instances, especially in the case of the French attempt to set up imperial authority in Mexico, it guided our political action, and it is to-day firmly imbedded in the American heart.

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It is true that this doctrine refers to the political and not to the material interest of America; but no one can deny that to place the isthmus under the protection and guarantee of the powers of Europe, rather than under the protection of the leading power of this hemisphere, would seriously threaten and affect the political interest of that power.

It is not to be anticipated that Great Britain will controvert an international doctrine, which she suggested to the United States, when looking to her own interest, and which, when adopted by this Republic, she highly approved; and it is but frank to say that the people of this country would be as unwilling that the pathway of commerce between the Pacific coast and our eastern market should be under the dominion of the allied European powers as would be the people of Great Britain that the transit from one to another part of her possessions should be under such control.

Prior to the war of the Revolution, Great Britain had acquired strong positions from Halifax to Antigua, dominating the coast of the United States. She retained these positions after the peace of 1783, and continues to use them for offensive and defensive purposes. She has strengthened old strongholds and made new ones, while the United States has ever refused to avail herself of proffered commanding external military stations.

No well-informed statesman doubts the ability of this nation to raise a powerful navy. To raise such a navy might bring commercial advantages to the United States, but it is doubtful whether it would promote the peace of the world; and the United States desire that their citizens may, without any armed assertion of right, be conveyed by water transit from their western to their eastern shores without passing under the guns of European powers.

These are our own views, and it is but frank to state them, while Her Majesty's Government is not called upon either to admit or deny them.

To considerations such as these Lord Granville, in his dispatch of November 10, 1881, answers that the position of Great Britain and the United States, in reference to the canal, is determined by the—

Engagements entered into by them respectively in the convention, which was signed at Washington on the 19th of April, 1850, commonly known as the Clayton-Bulwer treaty, and that Her Majesty's Government rely with confidence upon the observance of all the engagements of that treaty.

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We are thus fairly brought to the consideration of the Clayton-Bulwer treaty.

The treaty relates to communication between the oceans, and divides itself into two parts:

First, and principally, that which the treaty terms a "particular object," to wit, a then projected interoceanic canal in Central America by the Nicaragua route; and this is the only object stated in the preamble of the treaty, which says that the two governments, "being desirous of consolidating the relations of amity which so happily subsist between them, by setting forth and fixing in a convention their views and intentions with reference to any means of communication by ship-canal which may be constructed between the Atlantic and Pacific Oceans by the way of the river San Juan de Nicaragua and either or both of the lakes of Nicaragua or Managua to any port or place on the Pacific Ocean," to that end confer full powers on Mr. Clayton and Sir Henry Bulwer.

This first and principal object of the treaty is considered in the first seven articles.

Second. The subordinate object of the treaty is that treated of in the remaining or eighth article, which states that the two governments "having not only desired, in entering into this convention, to accomplish a *particular object*, but also to establish a general principle (and this is the principle), hereby agree to extend their protection by treaty stipulation to any other practicable communication" across the isthmus, "and especially to the interoceanic communications, should the same prove practicable, whether by canal or railroad, which are now proposed to be established by the way of Tehuantepec or Panama." This "general principle" or joint protection is to be effected as stated, "by treaty stipulations."

Although this discussion relates to a canal by the Panama route outside of Central America, to which the eighth article refers, yet your attention is invited as well to the first and principal as to the second and subordinate purpose of the treaty.

First. While the primary object of the treaty, as will be seen, was to aid the immediate construction of a canal by what is known as the Nicaragua route, it is equally plain that another and important object, which the United States had in view, was to dispossess Great Britain of settlements in Central America, whether under cover of Indian sovereignty or otherwise. The United States were tenacious that Great

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Britain should not extend further her occupation of threatening military or naval strategic points along their maritime frontier. To assure this, the parties to the treaty jointly agreed not to exercise dominion over, or fortify or colonize Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America. Great Britain, however, exercises dominion over Belize or British Honduras, the area of which is equal to that of Massachusetts, Connecticut, and Rhode Island, and the impression prevails that since the conclusion of the treaty of 1850, the English inhabitants of that district have spread into the territory of the neighboring republics and now occupy a large area of land which, under the convention, belongs to one or the other of the two republics, but over which the Government of Her Majesty assumes to exercise control.

Such dominion seems to be inconsistent with that provision of the treaty which prohibits the exercise of dominion by Great Britain over any part of Central America. This makes it proper for me to say that the English privileges, at the time of the conclusion of the Clayton Bulwer treaty, in what has been known as the Belize, were confined to a right to cut wood and establish saw-mills in a territory defined by metes and bounds. These privileges were conferred by treaties, in which Spanish sovereignty was recognized. On the successful revolution, the rights of Spain vested in the new republics, and had not been materially changed when the Clayton-Bulwer treaty was concluded. That treaty was concluded April 19, and its ratification advised by the Senate May 22, 1850. On the exchange of the ratifications, Sir Henry Bulwer filed in this department, under date of June 29, 1850, a declaration that the exchange was made with the understanding on the part of Her Majesty's Government that the treaty did not apply to Her Majesty's *settlement* at Honduras and its dependencies. Mr. Clayton answered, under date of July 4, 1850, that he so understood, but that he must not be understood to either affirm or deny British title therein. It is to be observed that each of these declarations was made after the conclusion of the treaty by the joint action of the President and the Senate, and that the declaration was not made to or accepted by them. In 1859 Great Britain entered into a treaty with Guatemala, in which what had been called the *settlement* in the declaration made on the exchange of the ratification of the Clayton-Bulwer treaty was styled "Her Britannic Majesty's settlement and possessions."

In the treaty with Guatemala the boundaries were defined, and it was agreed that all on one side of the defined boundaries "belongs to Her

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Britannic Majesty." It is further understood that when the commissioners met to mark the boundary in accordance with the agreement, it was found that the subjects of Great Britain had occupied so much more of Guatemala than was supposed that the commissioner on the part of Her Majesty's Government refused to proceed, and this large area of land has since remained practically in the possession of Great Britain.

The United States have never given their assent to this conversion of the British "settlement" in Central America under Spanish-American sovereignty into a British "possession" with British sovereignty. There is a vast difference between a settlement subject to the sovereignty of the Central-American republic and a colony controlled by Great Britain.

Under the treaty of 1850, while it is binding, the United States have not the right to exercise dominion over or to colonize one foot of territory in Central America. Great Britain is under the same rigid restriction. And if Great Britain has violated and continues to violate that provision, the treaty is, of course, voidable at the pleasure of the United States.

Again, it is well known that the parties to the Clayton-Bulwer treaty anticipated that a canal by the Nicaragua route was to be at once commenced. Under the assumption of a protectorate of Mosquito, British authority was at that time in actual and visible occupation of one end of the Nicaragua route, whether with or without title is not now material, and it was intended by this treaty to dispossess Great Britain of this occupation. This object was accomplished in 1859 and 1860 by treaties between Great Britain, Guatemala, Honduras, and Nicaragua, referred to in Lord Granville's dispatch of January 14, 1882. It was to this adjustment, which was one of the prime objects of the treaty, and not to the colonization of British Honduras that Mr. Buchanan in his message of December 3, 1860, alludes as "an amicable and honorable adjustment of dangerous questions arising from the Clayton-Bulwer treaty."

When the Clayton-Bulwer treaty was concluded it was contemplated that the Nicaragua Canal, to which the treaty principally had relation, would be at once commenced and finished with all possible speed by American and British capital under the impulse of the joint protectorate. This appears not only from the context of the treaty, but also from the history of the negotiations which led to the treaty, and the relations which then existed between this government and the Central American states.

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On December 12, 1846, New Grenada, by a treaty of commerce, in consideration of certain guarantees, made the United States valuable grants relating to the Panama route, to which your attention will be directed when we consider the rights of this Republic in relation to the Panama route.

The discovery of gold in California soon made it important to find some rapid way of reaching it. Notwithstanding the progress of the Panama Railroad scheme, public feeling was running strongly in favor of a ship-canal large enough to accommodate ocean steamships. Influenced by this strong feeling the minister of the United States in Nicaragua, without instructions, negotiated a treaty with that republic, which conferred upon certain citizens of the United States the valuable right to construct a ship-canal from San Juan on the Atlantic coast to the Pacific. Nicaragua claimed sovereignty over the whole of the line of the proposed canal, while Great Britain, as I have shown, claimed sovereignty over a portion of it occupied by the Mosquito Indians.

At the time of the concession by Nicaragua it would have been impossible to procure in the United States the capital necessary for the construction of a ship-canal from the Atlantic to the Pacific.

Hence it was that, when Mr. Clayton learned of the concession, he at once informed Mr. Crampton, the British minister, saying that the United States did not propose to avail themselves exclusively of these privileges, but wished a canal constructed, and that the claim of Great Britain on behalf of the Mosquito Indians, which the United States could not admit, stood in the way. The Government of the United States, Mr. Clayton said, was persuaded that—

> These considerations, if fairly laid before Her Majesty's Government, would induce Her Majesty's Government to make such an arrangement with regard to the Mosquito Indians as would prevent its being an obstacle to the design in question.

President Taylor was present at the interview, and "cordially concurred." Mr. Crampton reported the conversation to Lord Palmerston the 1st October, and on the 15th of the same month transmitted to him a copy of the concession by Nicaragua to the American company. The 22d November Mr. Abbott Lawrence officially informed Lord Palmerston that an American company, aided by the subscription of a large amount of British capital, had begun to construct the Panama Railroad, and had completed the contracts for iron for it. He transmitted to Lord Palmerston a copy of the guaranty in the treaty of 1846 with New

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Grenada, and invited Great Britain to join in the guaranty. In the same note he acquainted Her Majesty's Government with the concession from Nicaragua to the American canal-company, and said that the conflicting claims as to Mosquito threw an obstacle in the way of the work, and invited a conversation on the subject. It seems that several conversations were had, since on the 14th of the following December Mr. Lawrence addressed a formal note to Lord Palmerston, in which, after referring to them and again setting forth the concessions for the Panama Railroad and the Nicaragua Canal, and stating that the United States had "disclaimed all intention to settle, annex, colonize, or fortify the territory of Central America, which declaration had been met by a similar disclaimer on the part of Great Britain," and also that Her Majesty's Government "had intimated their willingness to join with the United States in their guaranty of neutrality," he asked in substance, 1st. Whether Great Britain would enter into a treaty with Nicaragua similar to that negotiated by the United States? 2d. Whether Great Britain would enter into a treaty with New Grenada guaranteeing the neutrality of the railway then under construction. 3d. Whether the obstruction of the Mosquito protectorate would be removed? This note was never answered formally in London, but negotiations were transferred to Washington.

Meantime, and in the autumn of 1849, Sir Henry Bulwer had succeeded Mr. Crampton in Washington, and, soon after his arrival, commenced negotiations with Mr. Clayton for a treaty for the protection of a canal.

On the 6th of January, 1850, Sir Henry Bulwer wrote to Lord Palmerston, saying:

> Your lordship is aware that the main interest of the United States in this matter has arisen from its newly acquired possession in the Pacific, and the project of an American company to form a water communication between the two oceans, passing through the lake of Nicaragua and the River San Juan; this company having obtained from the state of Nicaragua the use of its lakes and territory for this purpose, and the use also of the river San Juan, to which Nicaragua lays claim. * * * But it so happens that while it is very difficult, not to say impossible, for Her Majesty's Government to listen to those claims of Nicaragua, our decision with respect to which has been already openly taken, there is no difficulty, I believe, whatsoever in Her Majesty's Government assisting the United States in its general views with respect to that water communication across Central America, which Great Britain must be almost as desirous as the United States to see established. * * * I am disposed to think that the best way of doing this is by a convention between Great Britain and the United States.

Negotiations conducted on this basis progressed so rapidly that on the 3d February, 1850, Sir Henry Bulwer was able to transmit for Lord Palmerston's criticism the full project of a treaty. Extracts from the

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covering dispatch fully explain what the treaty was intended to accomplish:

The State of Nicaragua made to an American company, formed for the construction of such a canal, the grant, accompanied by various favors and privileges, of all such portion of the territory claimed by it as the said company require. * * * It was, however, impossible for the contemplated scheme to be executed under any grant from the State of Nicaragua as long as the mouth of the San Juan River was in the hands of another people protected by Great Britain. * * * Both the American company, to which I have alluded, and the American Government, have latterly manifested an earnest desire to have it clearly understood that they will modify all that portion of their original engagement with Nicaragua which secures any advantages to one State which another may not equally enjoy; and if such be the spirit which is to preside over the vast project under consideration, Great Britain has not only no interest in preventing its success, but every interest in forwarding its completion and providing for its security. * * * It is with such views that the inclosed convention has been drawn up, its object being to exclude all questions of the disputes between Nicaragua and the Mosquitos; but to settle in fact all that it was essential to settle with regard to these disputes as far as the ship communication between the Atlantic and Pacific and the navigation of the river San Juan were concerned.

The project, which was inclosed in this dispatch, was, in the substance of its provisions and in most of its language, identical with the treaty subsequently concluded, with one marked exception. In the project, Article VII stopped with the general provision to give encouragement and support to the first parties offering to commence the work with the necessary capital. In the subsequent negotiations the following words were added to that article, and form part of Article VII of the executed treaty:

And if any persons or company should already have, with any State through which the proposed ship-canal may pass, a contract for the construction of such a canal as that specified in this convention, to the stipulations of which contract neither of the contracting parties in this convention have any just cause to object, and the said persons or company shall, moreover, have made preparations and expended time, money, and trouble on the faith of such contract, it is hereby agreed that such persons or company shall have a priority of claim over every other person, persons, or company to the protection of the Governments of the United States and Great Britain, and be allowed a year from the date of the exchange of the ratifications of this convention for concluding their arrangements and presenting evidence of sufficient capital subscribed to accomplish the contemplated undertaking; it being understood that if at the expiration of the aforesaid period such persons or company be not able to commence and carry out the proposed enterprise, then the Governments of the United States and Great Britain shall be free to afford their protection to any other persons or company that shall be prepared to commence and proceed with the construction of the canal in question.

The Clayton-Bulwer treaty was concluded on the 19th of the following April, and I think it will not be denied that the object which President Taylor, Mr. Clayton, Sir Henry Bulwer, and Lord Palmerston had in view in making it was primarily and mainly this: To insure at the earliest possible moment the completion of the particular ship-canal for

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which a concession had been made by Nicaragua to citizens of the United States on the 29th August, 1849. All the interviews of which accounts remain, and all the correspondence relate to this particular canal and to no other. As if to make assurance doubly sure, the project of a treaty which Sir Henry Bulwer sent to Lord Palmerston the 3d of February being found doubtful or insufficient in this respect, was so amended between that time and the 19th April as to make it practically certain that that grant would be accepted by both governments as the one covered by the treaty.

It was to this particular canal that were to be applied all the provisions of the first article in the treaty relating to the fortification of the canal, the control over it, and exclusive advantage in it; of the second article, relating to blockade, detention or capture; of the third and fourth articles, relating to protection during construction and to free ports; of the fifth article, in regard to a guaranty of neutrality; of the sixth article, with regard to treaties with other States, and the use of the good offices of the high contracting parties; and of the seventh article, as already noticed; but if under the provisions of the seventh article the claims of the holders of this particular concession should be set aside, then each government reserved to itself the right to determine whether its interests required it to afford protection to the holders of any other concession.

The two governments did, however, subsequently come to a harmonious agreement with regard to the grant by Nicaragua, the one contemplated by the treaty.

The company was organized, and Colonel Childs, who had been chief engineer of the canals of the State of New York, was sent to Nicaragua to make a survey. He arrived there in August, 1850, and in 1852 his report was received, printed, and laid before the Secretary of War by direction of the President, who detailed Colonel Abert and Lieutenant-Colonel Turnbull, of the United States Army, to examine it and give their opinions upon it. They approved the report on the 20th March, 1852.

On the 16th June, in the same year, Mr. Lawrence informed Lord Malmesbury of these facts, and requested Her Majesty's Government to appoint engineers of skill and experience to examine it on the part of that government.

Mr. Lawrence was on the 30th July informed that an officer of the royal engineers and an eminent civil engineer had been appointed for that

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purpose, and on the 13th August their report was transmitted to Mr. Lawrence by Lord Malmesbury. The report was favorable, and a combination of British capitalists was made in contemplation of united action with American shareholders in the construction of the canal. For reasons which need not now be repeated, but principally because of the discussion which immediately began as to the clauses of the treaty relating to settlements in British Honduras, the project failed, and no canal was ever constructed under that grant.

A line of steamers was put on and run for many years, carrying passengers between New York and San Francisco. The expedition of Walker into Nicaragua terminated this line. The grant was revoked, the steamers were seized; the stockholders received no benefit from their property, and although the company nominally exists, it has been practically superseded by subsequent grants from Nicaragua to other companies.

It was also agreed in the treaty that the parties should invite other states to enter into similar stipulation, to the end that they might share in the "honor and advantage of having contributed to a work of such general interest and importance as the canal herein contemplated," to wit, that by the Nicaragua route.

It is to be observed that if other nations were to become parties to the enterprise it was only on the joint invitation of both the United States and Great Britain; but the President regards the provision as lapsed by the failure to construct the canal to which it referred, and by the fact before stated that experience has shown that no joint protectorate for any canal across the isthmus is requisite. The canal, however, now in question is on the Panama and not on the Nicaragua route.

The remaining subject of the treaty is contained in the eighth article, which relates to a canal or railway across the isthmus other than by the Nicaragua route, as by way of Tehuantepec or Panama, and it is this provision of the treaty which has occasioned this correspondence. The article provides as follows:

> The Governments of the United States and Great Britain having not only desired, in entering into this convention, to accomplish a *particular object* [to wit, the Nicaragua Canal, which, at the date of the treaty, it was thought was about to be constructed], but also to establish a general principle, they hereby agree to extend their protection, by *treaty stipulations*, to any other communications, whether by canal or railway, across the isthmus which connects North and South America, and especially to the interoceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by the way of Tehuantepec or Panama.

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It is to be here observed that the Government of the United States has a treaty with New Grenada, now a part of the United States of Colombia, entered into in 1846, by which free transit is guarantied to the citizens of the Uuited States across the Isthmus of Panama upon any mode of communication that may be constructed, subject to no duties or burdens but such as may be imposed upon citizens of New Grenada; and by which, in order to secure the tranquil and constant enjoyment of these advantages, the United States guarantied, positively and efficaciously, the *perfect neutrality of the isthmus*, with the view that free transit from sea to sea might not be interrupted or embarrassed, and also guarantied the rights of sovereignty and property which New Grenada (now the United States of Colombia) had and possesses over said territory.

By this treaty with New Grenada the United States claim to occupy a peculiar relation to the means of transit by railroad or canal across the isthmus, within the territories of the United States of Colombia, a relation which cannot justly be superseded by the intervention of other States without the consent of the United States, duly and properly obtained. A protectorate of this kind is, like government, necessarily exclusive in its character, and implies a right and duty to make it effective. There may be a joint protectorate engaged in by mutual convention of different States, but the protectorate itself must be a unit. The treaty with New Grenade of 1846 still remains in full force. If Great Britain should desire to be united with the Government of the United States in that guaranty, of course it would require the consent of the United States of Colombia and of this government, and a convention to that end, the terms of which should be made agreeable to the parties.

Article VIII of the Clayton-Bulwer treaty relates only to those projects *now* [1850] proposed to be established; and expressly contemplates some further "treaty stipulation" on the part of Great Britain with the United States of America and New Grenada, now the United States of Colombia, before Great Britain can join the United States in the protectorate of the canal or railway by the Panama route. No such treaty stipulation has been made or has been proposed by Great Britain. Since the ratification of the Clayton-Bulwer treaty, for thirty years the United States, under the treaty of 1846 with New Grenada, has extended protection to the transit from sea to sea by the Panama Railway.

Should Her Majesty's Government, after obtaining the consent thereto

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of the United States of Colombia, claim, under the Clayton-Bulwer treaty, the right to join the United States in the protection of the existing Panama Railway, or any future Panama canal, the United States would submit that experience has shown that no such joint protectorate is requisite; that the Clayton-Bulwer treaty is subject to the provisions of the treaty of 1846 with New Grenada, while it exists, which treaty obliges the United States to afford, and secures to it the sole protectorate of any transit by the Panama route; and if Great Britain still claimed the right to join in the protectorate the United States would then determine whether the "treaty stipulations" proposed by Great Britain regulating that joint protectorate were just; and, if so, whether the length of time during which Great Britain has concurred in the protection of the Panama route under the treaty with New Grenada has or has not relieved the United States from any obligation to accept a proposal from the government to join in the guaranty.

I may then state the President's views on the whole subject, which I do with an assurance that they will meet with a candid consideration from Lord Granville, and with the hope that they may be substantially concurred in by Her Majesty's Government.

The Clayton-Bulwer treaty was concluded to secure a thing which did not exist, and which now never can exist. It was to secure the construction of a canal under the grant of 1849 from Nicaragua that the United States consented to waive the exclusive and valuable rights which had been given to them; that they consented to agree with Great Britain that they would not occupy, fortify, colonize, or assume dominion over any part of Central America; and that they consented to admit Her Majesty's Government at some future day to a share in the protection which they have exercised over the Isthmus of Panama.

The Government and people of the United States, though rich in land and industry, were poor in money and floating capital in 1850. The scheme for a canal, even without the complications of the Mosquito protectorate, was too vast for the means of the Americans of that day, who numbered then considerably less than one-half of their numbers to-day. They went to England, which had what they had not, surrendered their exclusive privileges, offered an equal share of all they had in those regions in order, as expressed in the seventh article of the treaty, "that no time should be unnecessarily lost in commencing and constructing the said canal." Through no fault of theirs time was unnecessarily lost, the work was never begun, and the concession failed.

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The President does not think that the United States are called upon by any principle of equity to revive those provisions of the Clayton-Bulwer treaty which were specially applicable to the concession of August, 1849, and apply them to any other concession which has been since or may hereafter be made. The conditions of 1882 are not those of 1852. The people of the United States have now abundance of surplus capital for such enterprises, and have no need to call upon foreign capitalists. The legislative branch of the Government of the United States may also desire to be free to place the credit of the United States at the service of one or more of these enterprises. The President does not feel himself warranted in making any engagement or any admission respecting the extinct provisions of the Clayton-Bulwer treaty which would prevent or interfere with such a purpose. On the contrary, frankness requires him to say that as the persons who held the grant which the United States understood to be accepted by the two governments under the provisions of the treaty have not "carried out the proposed enterprise," the United States esteem themselves competent to refuse to afford their protection jointly with Great Britain to any other persons or company, and hold themselves free hereafter to protect any interoceanic communication in which they or their citizens may become interested in such way as treaties with the local sovereign powers may warrant and their interests may require.

There are some provisions of the treaty which the President thought might be advantageously retained. With this purpose the present correspondence was opened by the note to you of the 19th November last, in which these points were indicated. The President is still ready on the part of the United States to agree that the reciprocal engagements respecting the acquisition of territory in Central America, and respecting the establishment of a free port at each end of whatever canal may be constructed, shall continue in force, and to define by agreement the distance from either end of the canal where captures may be made by a belligerent in time of war, and with this definition thus made to keep alive the second article of the treaty. He hopes that Lord Granville on further consideration may not be averse to revising his opinion that such agreements would not be beneficial.

To the suggestion made by Lord Granville, at the close of this note of January 7, that the United States should take the initiative in an invitation to other powers to participate in an agreement based upon the convention of 1850, the President is constrained, by the considera-

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tions already presented, to say that the United States cannot take part in extending such an invitation, and to state with entire frankness, that the United States would look with disfavor upon an attempt at a concert of political action by other powers in that direction.

It is not necessary to observe that there is no provision of the Clayton-Bulwer treaty which authorizes Great Britain to invite, or obliges the United States to accept, the aid of other nations to protect or to guarantee the neutrality of the Panama route.

Fortunately the want of harmony in the views of the two governments can have at present no injurious influence. No canal yet exists across the isthmus, and in the natural course of events some time must elapse before one can be constructed; meanwhile the points of divergence between Her Majesty's Government and that of the United States may disappear. The President hopes that long before the subject becomes one of practical importance Her Majesty's Government may be brought to see that the interests of Great Britain and of the United States in this matter are identical, and are best promoted by the peaceful policy which he has marked out for this country.

In the mean time the diversity of opinion which now exists will not in any wise impair the good understanding happily existing between the people and Governments of the United States and Great Britain.

You will read this dispatch to Lord Granville, and if he desires to have a copy of it you may leave one with him.

I am, sir, your obedient servant,

FREDK. T. FRELINGHUYSEN.

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II.

EXPLANATORY DOCUMENTS AND PAPERS.

1.—*Definite Treaty of Peace between Great Britain and Spain. Signed at Paris, the 10th of February, 1763.*

[Extract.]

XVII. His Britannic Majesty shall cause to be demolished all the fortifications which his Subjects shall have erected in the Bay of Honduras, and other places of the Territory of Spain in that part of the World, 4 months after the Ratification of the present Treaty; and His Catholic Majesty shall not permit His Britannic Majesty's Subjects, or their Workmen, to be disturbed or molested, under any pretence whatsoever, in the said places, in their occupation of cutting, loading and carrying away logwood; and for this purpose, they may build without hindrance, and occupy without interruption, the houses and magazines which are necessary for them, for their families and for their effects; and His Catholic Majesty assures to them, by this Article, the full enjoyment of those advantages and powers on the Spanish Coasts and Territories, as above stipulated, immediately after the Ratification of the present Treaty.

2.—*Definitive Treaty of Peace between Great Britain and Spain. Signed at Versailles, 3d September, 1783.*

[Extract.]

VI. The intention of the 2 High Contrating Parties being to prevent as much as possible, all the causes of complaint and misunderstanding heretofore occasioned by the cutting of wood for dyeing, or log-wood; and several English settlements having been formed and extended, under that pretence, upon the Spanish continent; it is expressly agreed, that His Britannic Majesty's Subjects shall have the right of cutting, loading and carrying away logwood, in the District lying between the Rivers Wallis or Bellize, and Rio Hondo, taking the course of the said 2 Rivers for unalterable boundaries, so as that the navigation of them be common to both Nations, to wit: by the River Wallis or Bellize, from the sea, ascending as far as opposite to a Lake or Inlet which runs into the land and forms an Isthmus or Neck, with another similar inlet, which comes from the side of Rio-Nuevo, or New River; so that the line of separation shall pass straight across the said Isthmus, and meet another Lake formed by the water of Rio Nuevo, or New River, at its current. The said line shall continue with the course of Rio Nuevo, descending as far as opposite to a River, the source of which is marked in the Map, between Rio-Nuevo and Rio-Hondo, and which empties itself into Rio Hondo; which River shall also serve as a common boundary, so far as its junction with Rio-Hondo, and from thence descending

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by Rio-Hondo to the sea, as the whole is marked on the map which the Plenipotentiaries of the 2 Crowns have thought proper to make use of, for ascertaining the points agreed upon, to the end that a good correspondence may reign between the 2 Nations, and that the English Workmen, Cutters, and Laborers may not trespass, from an uncertainty of the Boundaries. The respective Commissaries shall fix upon convenient places, in the Territory above marked out, in order that His Britannic Majesty's Subjects, employed in the felling of logwood, may, without interruption, build therein houses and magazines necessary for themselves, their Families, and their effects: and His Catholic Majesty assures to them the enjoyment of all that is expressed in the present article; provided that these Stipulations shall not be considered as derogating in any wise from his Rights of Sovereignty. Therefore all the English, who may be dispersed in any other parts, whether on the Spanish Continent, or in any of the Islands whatsoever, dependent on the aforesaid Spanish Continent, and for whatever reason it might be, without exception, shall retire within the District which has been above described, in the space of 18 months, to be computed from the exchange of the Ratifications; and for this purpose Orders shall be issued on the part of His Britannic Majesty; and on that of His Catholic Majesty, his Governors shall be ordered to grant to the English, dispersed, every convenience possible for their removing to the Settlement agreed upon by the present Article, or for their retiring wherever they shall think proper. It is likewise stipulated, that if any Fortifications should actually have been heretofore erected within the limits marked out, His Britannic Majesty shall cause them all to be demolished, and he will order his Subjects not to build any new ones. The English Inhabitants, who shall settle there for the cutting of log-wood, shall be permitted to enjoy a free Fishery for their subsistence, on the Coasts of the District above agreed on, or of the Islands situated opposite thereto, without being in any wise disturbed on that account; provided they do not establish themselves in any manner on the said Islands.

3.—*Convention between Great Britain and Spain, relative to America. Signed at London, the 14th of July, 1786.*

The Kings of England and of Spain animated with the same desire of consolidating, by every means in their power, the friendship so happily subsisting between them and their Kingdoms, and wishing with one accord to prevent even the shadow of misunderstanding which might be occasioned by doubts, misconceptions, or other causes of dispute between the Subjects on the Frontiers of the 2 Monarchies, especially in distant Countries as are those in America, have thought proper to settle, with all possible good faith, by a new Convention, the points which might one day or other, be productive of such inconveniences, as the experience of former times has very often shown.

To this end, the King of Great Britain has named the Most Noble and Most Excellent Lord, Francis Baron Osborne, of Kiveton, Marquis of Carmarthen, His Britannic Majesty's Privy Councillor, and Principal Secretary of State for the Department for Foreign Affairs, &c., &c., &c., and the Catholic King has likewise authorized Don Bernardo del Campo, Knight of the Noble Order of Charles the Third, Secretary of the same Order, Secretary of the Supreme Council of State, and his Minister

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Plenipotentiary to the King of Great Britain: who having communicated to each other their respective Full Powers, prepared in due form, have agreed upon the following Articles:

ART. I. His Britannic Majesty's Subjects, and the other Colonists who have hitherto enjoyed the protection of England, shall evacuate the Country of the Mosquitos, as well as the Continent in general, and the Islands adjacent, without exception, situated beyond the Line hereinafter described, as what ought to be the Frontier of the extent of Territory granted by His Catholic Majesty to the English, for the uses specified in the IIIrd Article of the present Convention, and in addition to the Country already granted to them in virtue of the Stipulations agreed upon by the Commissaries of the 2 Crowns, in 1783.

II. The Catholic King, to prove, on his side, to the King of Great Britain, the sincerity of his sentiments of friendship towards His said Majesty and the British Nation, will grant to the English more extensive limits than those specified in the last Treaty of Peace: and the said limits of the Lands added by the present Convention shall for the future be understood in the manner following:

The English Line, beginning from the Sea, shall take the centre of the River Sibun or Jabon, and continue up to the source of the said River; from thence it shall cross in a straight line the intermediate land, till it intersects the River Wallis; and by the centre of the same River, the said Line shall descend to the point where it will meet the Line already settled and marked out by the Commissaries of the 2 Crowns in 1783: which limits, following the continuation of the said Line, shall be observed as formerly stipulated by the Definitive Treaty.

III. Although no other advantages have hitherto been in question, except that of cutting wood for dyeing, yet His Catholic Majesty, as a greater proof of his disposition to oblige the King of Great Britain, will grant to the English the liberty of cutting all other wood, without even excepting mahogany, as well as gathering all the fruits or produce of the earth, purely natural and uncultivated, which may, besides being carried away in their natural state, become an object of utility or of commerce, whether for food or for manufactures; but it is expressly agreed, that this Stipulation is never to be used as a pretext for establishing in that country any plantation of sugar, coffee, cocoa, or other like articles: or any fabric or manufacture by means of mills or other machines whatsoever, (this restriction however does not regard the use of saw-mills, for cutting or otherwise preparing the wood,) since all the Lands in question being indisputably acknowledged to belong of right to the Crown of Spain, no Settlements of that kind, or the Population which would follow, could be allowed.

The English shall be permitted to transport and convey all such wood, and other produce of the place, in its natural and uncultivated state, down the Rivers to the Sea, but without ever going beyond the limits which are prescribed to them by the Stipulations above granted, and without thereby taking an opportunity of ascending the said Rivers, beyond their bounds, into the countries belonging to Spain.

IV. The English shall be permitted to occupy the small Island known by the names of Casina, St. George's Key, or Cayo Casina, in consideration of the circumstance of that part of the coasts opposite to the said Island being looked upon as subject to dangerous disorders; but this permission is only to be made use of for purposes of real utility: and as great abuses, no less contrary to the intentions of the British Government than to the essential interests of Spain, might arise from this permission, it is here stipulated, as an indispensable condition, that no

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Fortification, or work of defence whatever, shall at any time be erected there, nor any body of Troops posted, nor any piece of Artillery kept there; and in order to verify with good faith the accomplishment of this condition *sine quâ non* (which might be infringed by Individuals, without the knowledge of the British Government) a Spanish Officer or Commissary, accompanied by an English Commissary or Officer, duly authorized, shall be admitted, twice a year, to examine into the real situation of things.

V. The English nation shall enjoy the liberty of re-fitting their Merchant Ships in the southern triangle included between the point of Cayo Casina and the cluster of small Islands which are situated opposite that part of the coast occupied by the Cutters, at the distance of 8 leagues from the River Wallis, 7 from Cayo Casina, and 3 from the River Sibun, a place which has always been found well-adapted to that purpose. For which end, the edifices and storehouses, absolutely necessary for that service, shall be allowed to be built; but in this concession is also included the express condition of not erecting Fortifications there at any time, or stationing Troops, or constructing any military works; and in like manner it shall not be permitted to station any Ships of War there, or to construct an arsenal or other building, the object of which might be the formation of a naval establishment.

VI. It is also stipulated, that the English may freely and peaceably catch Fish on the coast of the Country assigned to them by the last Treaty of Peace, as also of that which is added to them by the present Convention; but without going beyond their boundaries, and confining themselves within the distance specified in the preceding Article.

VII. All the restrictions specified in the last Treaty of 1783, for the entire preservation of the right of the Spanish Sovereignty over the country, in which is granted to the English only the privilege of making use of the wood of the different kinds, the fruits and other produce, in their natural state, are here confirmed; and the same restrictions shall also be observed with respect to the new grant. In consequence, the Inhabitants of those Countries shall employ themselves simply in the cutting and transporting of the said wood, and in the gathering and transporting of the fruits, without meditating any more expensive Settlements, or the formation of any system of Government, either military or civil, further than such regulations as Their Britannic and Catholic Majesties may hereafter judge proper to establish, for maintaining peace and good order amongst their respective Subjects.

VIII. As it is generally allowed that the woods and forests are preserved, and even multiply, by regular and methodical cuttings, the English shall observe this maxim as far as possible; but if, notwithstanding all their precautions, it should happen, in course of time, that they were in want of dyeing-wood or mahogany, with which the Spanish Possessions might be provided, the Spanish Government shall make no difficulty to furnish a supply to the English at a fair and reasonable price.

IX. Every possible precaution shall be observed to prevent smuggling; and the English shall take care to conform to the regulations which the Spanish Government shall think proper to establish amongst their own Subjects, in all communications which they may have with the latter; on condition, nevertheless, that the English shall be left in the peaceable enjoyment of the several advantages inserted in their favour in the last Treaty, or stipulated by the Present Convention.

X. The Spanish Governors shall be ordered to give to the said English, dispersed, all possible facilities for their removal to the Settlements

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agreed upon by the present Convention, according to the Stipulations of the VIth Article of the Definitive Treaty of 1783, with respect to the Country allotted for their use by the said Article.

XI. Their Britannic and Catholic Majesties, in order to remove every kind of doubt with regard to the true construction of the present Convention, think it necessary to declare that the conditions of the said Convention ought to be observed according to their sincere intention to ensure and improve the harmony and good understanding which so happily subsist at present between Their said Majesties.

In this view, His Britannic Majesty engages to give the most positive orders for the evacuation of the Countries above-mentioned, by all his Subjects, of whatever denomination; but if, contrary to such Declaration, there should still remain any Persons so daring as to presume, by retiring into the interior Country, to endeavor to obstruct the entire evacuation already agreed upon, His Britannic Majesty, so far from affording them the least succour, or even protection, will disavow them in the most solemn manner, as he will equally do those who may here after attempt to settle upon the Territory belonging to the Spanish Dominion.

XII. The evacuation agreed upon shall be completely effected within the space of 6 months after the exchange of the Ratifications of this Convention, or sooner if it can be done.

XIII. It is agreed that the new grants described in the preceding Articles, in favor of the English Nation, are to take place as soon as the aforesaid evacuation shall be entirely accomplished.

XIV. His Catholic Majesty, prompted solely by motives of humanity, promises to the King of England, that he will not exercise any act of severity against the Mosquitos, inhabiting in part the Countries which are to be evacuated, by virtue of the present Convention, on account of the connections which may have subsisted between the said Indians and the English; and His Britannic Majesty, on his part, will strictly prohibit all his Subjects from furnishing arms or war-like stores to the Indians in general, situated upon the Frontiers of the Spanish Possessions.

XV. The 2 Courts shall mutually transmit to each other Duplicates of the Orders which they are to dispatch to their respective Governors and Commanders in America, for the accomplishment of the present convention; and a Frigate, or proper Ship of War, shall be appointed on each side, to observe in conjunction that all things are performed in the best order possible, and with that cordiality and good faith of which the 2 Sovereigns have been pleased to set the example.

XVI. The present Convention shall be ratified by Their Britannic and Catholic Majesties, and the Ratifications exchanged, within the space of 6 weeks, or sooner if it can be done.

In witness whereof, we, the undersigned Ministers Plenipotentiary to Their Britannic and Catholic Majesties, in virtue of our respective Full Powers, have signed the present Convention, and have affixed thereto the Seals of our Arms.

Done at London, this 14th day of July 1786.

[L. S.] CARMARTHEN
[L. S.] LE CHEVR. DEL CAMPO.

DECLARATION.

At the time of exchanging our Sovereigns' Ratifications of the Convention signed the 14th of July last, we the Undersigned Ministers

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Plenipotentiary have agreed, that the visit of the English and Spanish Commissaries, mentioned in the IVth Article of the said Convention with respect to the Island of Cayo Casina, is to extend in like manner to all the other places, whether in the Islands or on the Continent, where the English Cutters shall be situated.

In witness whereof, we have signed this Declaration, and affixed thereto the Seals of our Arms.

London, this 1st of September 1786.

[L. S.] CARMARTHEN.
[L. S.] LE MARQUIS DEL CAMPO.

4.—*President Monroe's message to Congress, March 8, 1822.*

[Extract.]

The revolutionary movement in the Spanish provinces in this hemisphere attracted the attention and excited the sympathy of our fellow citizens from its commencement.

This feeling was natural and honorable to them, from causes which need not be communicated to you. It has been gratifying to all to see the general acquiescence which has been manifested in the policy which the constituted authorities have deemed it proper to pursue in regard to this contest. As soon as the movement assumed such a steady and consistent form as to make the success of the provinces probable, the rights to which they were entitled by the laws of nations, as equal parties to a civil war, were extended to them. Each party was permitted to enter our ports with its public and private ships, and to take from them every article which was the subject of commerce with other nations. Our citizens also have carried on commerce with both parties, and the Government has protected it with each in articles not contraband of war. Through the whole of this contest the United States have remained neutral, and have fulfilled with the utmost impartiality all the obligations incident to that character.

This contest has now reached such a stage, and been attended with such decisive success on the part of the provinces, that it merits the most profound consideration whether their right to the rank of independent nations, with all the advantages incident to it in their intercourse with the United States, is not complete. Buenos Ayres assumed that rank by a formal declaration in 1816, and has enjoyed it since 1810, free from invasion by the parent country. The provinces composing the Republic of Colombia, after having separately declared their independence, were united by a fundamental law of the 17th of December, 1819. A strong Spanish force occupied at that time certain parts of the territory within their limits, and waged a destructive war. That force has since been repeatedly defeated, and the whole of it either made prisoners or destroyed, or expelled from the country, with the exception of an inconsiderable portion only which is blockaded in two fortresses.

The provinces on the Pacific have likewise been very successful. Chili declared her independence in 1818, and has since enjoyed it undisturbed; and of late, by the assistance of Chili and Buenos Ayres, the revolution has extended to Peru. Of the movement in Mexico our information is less authentic, but it is, nevertheless, distinctly understood that the new government has declared its independence, and that there

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is now no opposition to it there, nor a force to make any. For the last three years the Government of Spain has not sent a single corps of troops to any part of that country; nor is there any reason to believe it will send any in future. Thus, it is manifest that all those provinces are not only in the full enjoyment of their independence, but, considering the state of the war and other circumstances, that there is not the most remote prospect of their being deprived of it.

When the result of such a contest is manifestly settled, the new governments have a claim to recognition by other powers which ought not to be resisted. Civil wars too often excite feelings which the parties cannot control. The opinion entertained by other powers as to the result may assuage those feelings, and promote an accommodation between them useful and honorable to both. The delay which has been observed in making a decision on this important subject will, it is presumed, have afforded an unequivocal proof to Spain, as it must have done to other powers, of the high respect entertained by the United States for her rights, and of their determination not to interfere with them. The provinces belonging to this hemisphere are our neighbors, and have successively, as each portion of the country acquired its independence, pressed their recognition by an appeal to facts not to be contested, and which they thought gave a just title to it.

To motives of interest this government has invariably disclaimed all pretension, being resolved to take no part in the controversy or other measures in regard to it which should not merit the sanction of the civilized world.

To other claims a just sensibility has been always felt and frankly acknowledged; but they in themselves could never become an adequate cause of action. It was incumbent on this government to look to every important fact and circumstance on which a sound opinion could be formed, which has been done. When we regard, then, the great length of time which this war has been prosecuted, the complete success which has attended it in favor of the provinces, the present condition of the parties, and the utter inability of Spain to produce any change in it, we are compelled to conclude that its fate is settled, and that the provinces which have declared their independence, and are in the enjoyment of it, ought to be recognized.

Of the views of the Spanish government on this subject no particular information has been recently received. It may be presumed that the successful progress of the revolution through such a long series of years, gaining strength and extending annually in every direction, and embracing, by the late important events, with little exception, all the dominions of Spain south of the United States on this continent, placing thereby the complete sovereignty over the whole in the hands of the people, will reconcile the parent country to an accommodation with them on the basis of their unqualified independence. Nor has any authentic information been recently received of the disposition of other powers respecting it. A sincere desire has been cherished to act in concert with them in the proposed recognition, of which several were some time past duly apprised; but it was understood that they were not prepared for it. The immense space between those powers, even those which border on the Atlantic, and these provinces make the movement an affair of less interest and excitement to them than to us. It is probable therefore that they have been less attentive to its progress than we have been. It may be presumed, however, that the late events will dispel all doubts of the result.

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5.—*Observations of John Quincy Adams on the claim of Russia to territorial possessions on the continent of North America, communicated with Mr. Adams' letter to Mr. Middleton of July 22, 1823.*

[Extract.]

There can perhaps be no better time for saying frankly and explicitly to the Russian Government that the future peace of the world and the interest of Russia herself cannot be promoted by Russian settlements upon any part of the American continent. With the exception of the British establishments north of the United States, the remainder of both the American continents must henceforth be left to the management of American hands.

It cannot possibly be the purpose of Russia to form extensive colonial establishments in America. The new American republics will be as impatient of a Russian neighbor as the United States; and the claim of Russia to territorial possessions extending to the fifty-first degree of north latitude is equally compatible with the British pretensions.

Mr. John Quincy Adams to Mr. Rush.

[Extract.]

No. 70.] DEPARTMENT OF STATE,
Washington, July 22, 1823.

SIR: * * * It is not imaginable that, in the present condition of the world, any European nation should entertain the project of settling a colony on the northwest coast of America. That the United States should form establishments there with views of absolute territorial right and inland communication, is not only to be expected, but is pointed out by the finger of nature, and has been for years a subject of serious deliberation in Congress. A plan has for several sessions been before them for establishing a territorial government on the borders of the Columbia River. It will undoubtedly be resumed at their next session, and even if then again postponed, there cannot be a doubt that in the course of a very few years it must be carried into effect.

* * * * * * *

The application of colonial principles of exclusion, therefore, cannot be admitted by the United States as lawful upon any part of the northwest coast of America, or as belonging to any European nation. Their own settlements there, when organized as territorial governments, will be adapted to the freedom of their own institutions, and, as constituent parts of the Union, be subject to the principles and provisions of their constitution. * * * * *

I have, &c.,

JOHN QUINCY ADAMS.

6.—*Mr. Rush to Mr. John Quincy Adams.*

No. 323.] LONDON, *August 19, 1823.* (Received October 9.)

SIR: When my interview with Mr. Canning, on Saturday, was about to close, I transiently asked him whether, notwithstanding the late news from Spain, we might not still hope that the Spaniards would get the better

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of all their difficulties. I had allusion to the defection of Ballasteros in Andalusia, an event seeming to threaten with new dangers the Constitutional cause. His reply was general, importing nothing more than his opinion of the increased difficulties and dangers with which, undoubtedly, this event was calculated to surround the Spanish cause.

Pursuing the topic of Spanish affairs, I remarked that should France ultimately effect her purposes in Spain, there was at least the consolation left that Great Britain would not allow her to go further and lay her hands upon the Spanish colonies, bringing them, too, under her grasp. I here had in my mind the sentiments promulgated upon this subject in Mr. Canning's note to the British ambassador at Paris of the 31st of March, during the negotiations that preceded the invasion of Spain. It will be recollected that the British Government say in this note that time and the course of events appeared to have substantially decided the question of the separation of these colonies from the mother country, although their formal recognization as independent states by Great Britain might be hastened or retarded by external circumstances, as well as by the internal condition of those new states themselves; and that as His Britannic Majesty disclaimed all intention of appropriating to himself the smallest portion of the late Spanish possessions in America, he was also satisfied that no attempt would be made by France to bring any of them under *her* dominion, either by conquest or by cession from Spain.

By this we are to understand, in terms sufficiently distinct, that Great Britain would not be passive under such an attempt by France, and Mr. Canning, on my having referred to this note, asked me what I thought my government would say to going hand in hand with this, in the same sentiment; not, as he added, that any concert in action under it could become necessary between the two countries, but that the simple fact of our being known to hold the same sentiment would, he had no doubt, by its moral effect, put down the intention on the part of France, admitting that she should ever entertain it. This belief was founded, he said, upon the large share of the maritime power of the world which Great Britain and the United States shared between them, and the consequent influence which the knowledge that they held a common opinion upon a question on which such large maritime interests, present and future, hung, could not fail to produce upon the rest of the world.

I replied that in what manner my government would look upon such a suggestion I was unable to say, but that I would communicate it in the same informal manner in which he threw it out. I said, however, that I did not think I should do so with full advantage, unless he would at the same time enlighten me as to the precise situation in which His Majesty's Government stood at this moment in relation to those new states, and especially on the material point of their own independence.

He replied that Great Britain certainly never again intended to lend her instrumentality or aid, whether by mediation or otherwise, towards making up the dispute between Spain and her colonies, but that if this result could still be brought about she would not interfere to *prevent* it. Upon my intimating that I had supposed that all idea of Spain ever recovering her authority over the colonies had long since gone by, he explained by saying that he did not mean to controvert that opinion, for he, too, believed that the day had arrived when all America might be considered as lost to Europe so far as the tie of political dependence was concerned. All that he meant was, that if Spain and the colonies should still be able to bring the dispute, not yet totally extinct between

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them, to a close upon terms satisfactory to both sides, and which should at the same time secure to Spain commercial or other advantages not extended to other nations, that Great Britain would not object to a compromise in this spirit of preference to Spain. All that she would ask would be to stand upon as favored a footing as any other nation after Spain. Upon my again alluding to the improbability of the dispute ever settling down now even upon this basis, he said that it was not his intention to maintain such a position, and that he had expressed himself as above rather for the purpose of indicating the feeling which this cabinet still had towards Spain in relation to the controversy than of predicting results.

Wishing, however, to be still more specifically informed, I asked whether Great Britain was at this moment taking any step, or contemplating any, which had reference to the recognition of these States, this being the point in which we felt the chief interest.

He replied that she had taken none whatever, as yet, but was upon the eve of taking one, not final, but preparatory, and which would still leave her at large to recognize or not, according to the position of events at a future period. The measure in question was to send out one or more individuals under authority from this government to South America, not strictly diplomatic, but clothed with powers in the nature of a commission of inquiry, and which in short he described as analogous to those exercised by our own commissioners in 1817, and that upon the result of this commission much might depend as to the ulterior conduct of Great Britain. I asked whether I was to understand that it would comprehend all the new States, or which of them. To which he replied that for the present it would be limited to Mexico.

Reverting to his first idea, he again said that he hoped that France would not, should even events in the Peninsula be favorable to her, extend her views to South America for the purpose of reducing the colonies, nominally, perhaps, for Spain, but in effect to subserve ends of her own; but that, in case she should meditate such a policy, he was satisfied that the knowledge of the United States being opposed to it, as well as Great Britain, could not fail to have its influence in checking her steps. In this way he thought good might be done by prevention, and peaceful prospects all around increased. As to the form in which such knowledge might be made to reach France, and even the other powers of Europe, he said, in conclusion, that that might probably be arranged in a manner that would be free from objection.

I again told him that I would convey his suggestions to you for the information of the President, and impart to him whatever reply I might receive. My own inference rather is that his proposition was a fortuitous one; yet he entered into it, I thought, with some interest, and appeared to receive with a corresponding satisfaction the assurance I gave him that it should be made known to the President. I did not feel myself at liberty to express any opinion unfavorable to it, and was as careful to give none in its favor.

Mr. Canning mentioned to me, at this same interview, that a late confidential dispatch which he had seen from Count Nesselrode to Count Lieven, dated, I think, in June, contained declarations respecting the Russian ukase, relative to the northwest coast, that were satisfactory; that they went to show that it would probably not be executed in a manner to give cause of complaint to other nations, and that, in particular, it had not yet been executed in any instance under orders issued by Russia subsequently to its first promulgation.

I have, &c., RICHARD RUSH.

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7.—*Mr. Rush to Mr. John Quincy Adams.*

No. 325.] LONDON, *August 23, 1823.* (Received October 9.)

SIR: I yesterday received from Mr. Canning a note, headed "private and confidendial," setting before me, in a more distinct form, the proposition respecting South American affairs which he communicated to me in conversation on the 16th, as already reported in my number 323. Of his note I lose no time in transmitting a copy for your information, as well as a copy of my answer to it, written and sent this day.

In shaping the answer on my own judgment alone, I feel that I have had a task of some embarrassment to perform, and shall be happy if it receives the President's approbation.

I believe that this government has the subject of Mr. Canning's proposition much at heart, and certainly his note bears, upon the face of it, a character of cordiality towards the Government of the United States which cannot escape notice.

I have therefore thought it proper to impart to my note a like character and to meet the points laid down in his, as far as I could, consistently with other and paramount considerations.

These I conceived to be chiefly twofold: first, the danger of pledging my government to any measure or course of policy which might in any degree, now or hereafter, implicate it in the federative system of Europe; and, secondly, I have felt myself alike without warrant to take a step which might prove exceptional in the eyes of France, with whom our pacific and friendly relations remain, I persume, undisturbed, whatever may be our speculative abhorrence of her attack upon the liberties of Spain.

In framing my answer, I had also to consider what was due to Spain herself, and I hope that I have not overlooked what was due to the colonies.

The whole subject is open to views on which my mind has deliberated anxiously. If the matter of my answer shall be thought to bear properly upon the motives and considerations which belong most materially to the occasion, it will be a source of great satisfaction to me.

The tone of earnestness in Mr. Canning's note, and the force of some of his expressions, naturally start the inference that the British cabinet cannot be without its serious apprehensions that ambitious enterprises are mediated against the independence of the South American States. Whether by France alone I cannot now say on any authentic grounds.

I have, &c.,

RICHARD RUSH.

Mr. Canning to Mr. Rush.

Private and confidential.] FOREIGN OFFICE, *August 20, 1823.*

MY DEAR SIR: Before leaving town I am desirous of bringing before you in a more distinct, but still in an unofficial and confidential shape, the question which we shortly discussed the last time that I had the pleasure of seeing you.

Is not the moment come when our governments might understand each other as to the Spanish-American colonies? And if we can arrive at such an understanding, would it not be expedient for ourselves, and beneficial for all the world, that the principles of it should be clearly settled and plainly avowed?

For ourselves we have no disguise.

1. We conceive the recovery of the colonies by Spain to be hopeless.
2. We conceive the question of the recognition of them, as independent states, to be one of time and circumstances.
3. We are, however, by no means disposed to throw any impediment in the way of an arrangement between them and the mother country by amicable negotiation.

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4. We aim not at the possession of any portion of them ourselves.

5. We could not see any portion of them transferred to any other power with indifference.

If these opinions and feelings are, as I firmly believe them to be, common to your government with ours, why should we hesitate mutually to confide them to each other, and to declare them in the face of the world?

If there be any European power which cherishes other projects, which looks to a forcible enterprise for reducing the colonies to subjugation, on the behalf or in the name of Spain, or which meditates the acquisition of any part of them to itself, by cession or by conquest, such a declaration on the part of your government and ours would be at once the most effectual and the least offensive mode of intimating our joint disapprobation of such projects.

It would at the same time put an end to all the jealousies of Spain with respect to her remaining colonies, and to the agitation which prevails in those colonies, an agitation which it would be but humane to allay, being determined (as we are) not to profit by encouraging it.

Do you conceive that, under the power which you have recently received, you are authorized to enter into negotiation, and to sign any convention upon this subject? Do you conceive, if that be not within your competence, you could exchange with me ministerial notes upon it?

Nothing could be more gratifying to me than to join with you in such a work, and I am persuaded there has seldom, in the history of the world, occurred an opportunity when so small an effort of two friendly governments might produce so unequivocal a good, and prevent such extensive calamities.

I shall be absent from London but three weeks at the utmost, but never so far distant but that I can receive and reply to any communication within three or four days.

I have, &c.,

GEORGE CANNING.

Mr. Rush to Mr. Canning.

LONDON, *August 23, 1823.*

MY DEAR SIR: Your unofficial and confidential note of the 20th instant reached me yesterday, and has commanded from me all the reflection due to the interest of its subject and to the friendly spirit of confidence upon which it is so emphatically founded.

The Government of the United States having, in the most formal manner, acknowledged the independence of the late Spanish provinces in America, desires nothing more anxiously than to see this independence maintained with stability, and under auspices that may promise prosperity and happiness to these new states themselves, as well as advantage to the rest of the world. As conducing to these great ends, my government has always desired, and still desires, to see them received into the family of nations by the powers of Europe, and especially, I may add, by Great Britain.

My government is also under a sincere conviction that the epoch has arrived when the interests of humanity and justice, as well as all other interests, would be essentially subserved by the general recognition of these states.

Making these remarks, I believe I may confidently say, that the sentiments unfolded in your note are fully those which belong also to my government.

It conceives the recovery of the colonies by Spain to be hopeless.

It would throw no impediment in the way of an arrangement between them and the mother country, by amicable negotiations, supposing an arrangement of this nature to be possible.

It does not aim at the possession of any portion of those communities for or on behalf of the United States.

It would regard as highly unjust and fruitful of disastrous consequences any attempt on the part of any European power to take possession of them by conquest, or by cession, or on any ground or pretext whatever.

But in what manner my government might deem it expedient to avow these principles and feelings, or express its disapprobation of such projects as the last, are points which none of my instructions, or the power which I have recently received, embrace; and they involve, I am forced to add, considerations of too much delicacy for me to act upon them in advance.

It will yield me particular pleasure to be the organ of promptly causing to be brought under the notice of the President the opinions and views of which you have made me the depositary upon this subject, and I am of nothing more sure than that he will fully appreciate their intrinsic interest, and not less the frank and friendly feelings towards the United States in which they have been conceived and communicated to me on your part.

Nor do I take too much upon myself when I anticipate the peculiar satisfaction the

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President will also derive from the intimation which you have not scrupled to afford me as to the just and liberal determinations of His Majesty's Government in regard to the colonies which still remain to Spain.

With a full reciprocation of the personal cordiality which your note also breathes, and begging you to accept the assurances of my great respect, I have, &c.,

RICHARD RUSH.

8.—*President Monroe's message to Congress December 2, 1823.*

[Extract.]

At the proposal of the Russian Imperial Government, made through the minister of the Emperor residing here, a full power and instructions have been transmitted to the minister of the United States at St. Petersburg to arrange by amicable negotiation the respective rights and interests of the two nations on the northwest coast of this continent. A similar proposal has been made by His Imperial Majesty to the Government of Great Britain, which has likewise been acceded to. The Government of the United States has been desirous by this friendly proceeding of manifesting the great value which they have invariably attached to the friendship of the Emperor, and their solicitude to cultivate the best understanding with his government.

In the discussions to which this interest has given rise, and in the arrangements by which they may terminate, the occasion has been judged proper for asserting as a principle, in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintained, are henceforth not to be considered as subjects for future colonization by any European powers.

* * * * * * *

The late events in Spain and Portugal show that Europe is still unsettled. Of this important fact no stronger proof can be adduced than that the allied powers should have thought it proper on any principle satisfactory to themselves to have interposed by force in the internal concerns of Spain. To what extent such interposition may be carried, on the same principle, is a question in which all independent powers whose governments differ from theirs are interested, even those most remote, and surely none more so than the United States.

Our policy in regard to Europe, which was adopted at an early stage of the wars, which have so long agitated that quarter of the globe, nevertheless remains the same, which is not to interfere in the internal concerns of any of its powers; to consider the government *de facto* as the legitimate government for us; to cultivate friendly relations with it, and to preserve those relations by a frank, firm, and manly policy, meeting, in all instances, the just claims of every power, submitting to injuries from none. But in regard to these continents, circumstances are eminently and conspicuously different. It is impossible that the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness, nor can any one believe that our southern brethren, if left to themselves, would adopt it of their own accord. It is equally, impossible, therefore that we should behold such interposition, in any form, with indifference. If we look to the comparative strength and resources of Spain and those new governments, and their distance from each other, it must be obvious that she can never subdue them. It is still the true policy of the United States to leave the parties to themselves, in the hope that other powers will pursue the same course.

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9.—*Mr. Rush to Mr. Middleton.*

[Extract.]

LONDON, *January 9, 1824.*

I have heretofore written to you on the 6th and 22d of December, and have now to inform you that from interviews which I have had with Mr. Canning, since the present month set in, I find that he will decline sending instructions to Sir Charles Bagot to proceed jointly with our government and that of Russia, in the negotiation relative to the northwest coast of America; but that he will be merely informed that it is now the intention of Great Britain to proceed separately.

Mr. Canning intimated to me that to proceed separately was the original intention of this government, to which effect Sir Charles Bagot had been instructed and never to any other, and that Sir Charles had only paused under your suggestions to him of its being the desire of our government that the three powers should move in concert at St. Petersburg upon this subject.

The resumption of its original course by this government has arisen chiefly from the principle which our government has adopted, of not considering the American continents as subjects for future colonization by any of the European powers, a principle to which Great Britain does not accede.

I have informed the Secretary of State of the above intention of this government. It will produce no alteration in my endeavors to obtain in negotiation here a settlement of the points as between the United States and Great Britain, respecting the northwest coast, in manner as my instructions lay them down to me.

10.—*Mr. Rush to Mr. John Quincy Adams.*

[Extract.]

LONDON, *August 12, 1824.*

SIR: * * * It is proper now, as on the question of the St. Lawrence, that I should give you faithful information of the manner in which the British plenipotentiaries received my proposal, and the principles under which I had introduced it. I may set out by saying, in a word, that they totally declined the one and totally denied the other. They said that Great Britain considered the whole of the unoccupied parts of America as being open to her future settlements in like manner as heretofore. They included within these parts as well that portion of the northwest coast lying between the forty-second and the fifty-first degrees of latitude as any other parts. The principle of colonization on that coast, or elsewhere on any portion of those continents not yet occupied, Great Britain was not prepared to relinquish. Neither was she prepared to accede to the exclusive claim of the United States. She had not, by her convention with Spain in 1790, or at any other period, conceded to that power any exclusive rights on that coast where actual settlements had not been formed. She considered the same principles applicable to it now as then. She could not concede to the United States, who held the Spanish title, claims which she had felt herself obliged to resist when advanced by Spain, and on her resistance to which the credit of Great Britain had been thought to depend.

* * * * * * *

I have, &c.,

RICHARD RUSH.

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11.—*Treaty of amity, commerce, and navigation between Great Britain and Mexico. Signed at London, December 26, 1826.*

[Extract.]

XIV. The subjects of his Britannic Majesty shall, on no account or pretext whatsoever, be disturbed or molested in the peaceable possession and exercise of whatever rights, privileges, and immunities they have at any time enjoyed within the limits prescribed and laid down in a convention signed between his said majesty and the King of Spain on the 14th of July, 1786; whether such rights, privileges, and immunities shall be derived from the stipulations of the said convention or from any other concession which may at any time have been made by the King of Spain or his predecessors to British subjects and settlers residing and following their lawful occupations within the limits aforesaid, the two contracting parties reserving, however, for some more fitting opportunity, the further arrangements on this article.

12.—*Treaty between the United States and New Granada of December 12, 1846.*

[Extract.]

ARTICLE XXXV.

The United States of America and the Republic of New Granada, desiring to make as durable as possible the relations which are to be established between the two parties by virtue of this treaty, have declared solemnly and do agree to the following points:

1st. For the better understanding of the preceding articles, it is and has been stipulated between the high contracting parties that the citizens, vessels, and merchandise of the United States shall enjoy in the ports of New Granada, including those of the part of the Granadian territory generally denominated *Isthmus of Panama*, from its southernmost extremity until the boundary of Costa Rica, all the exemptions, privileges, and immunities concerning commerce and navigation which are now or may hereafter be enjoyed by Granadian citizens, their vessels and merchandise; and that this equality of favors shall be made to extend to the passengers, correspondence, and merchandise of the United States in their transit across the said territory from one sea to the other. The government of New Granada guarantees to the government of the United States that the right of way or transit across the *Isthmus of Panama*, upon any modes of communication that now exist or that may be hereafter constructed, shall be open and free to the government and citizens of the United States, and for the transportation of any articles of produce, manufactures, or merchandise, of lawful commerce, belonging to the citizens of the United States; that no other tolls or charges shall be levied or collected upon the citizens of the United States, or their said merchandise thus passing over any road or canal that may be made by the government of New Granada, or by the authority of the same, than is, under like circumstances, levied upon and collected from the Granadian citizens; that any lawful produce, manufactures, or merchandise belonging to citizens of the United States thus passing from one sea to the other, in either direction, for the pur-

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pose of exportation to any other foreign country, shall not be liable to any import duties whatever; or, having paid such duties, they shall be entitled to drawback upon their exportation; nor shall the citizens of the United States be liable to any duties, tolls, or charges of any kind to which native citizens are not subjected for thus passing the said isthmus. And, in order to secure to themselves the tranquil and constant enjoyment of these advantages, and as an especial compensation for the said advantages, and for the favors they have acquired by the 4th, 5th, and 6th articles of this treaty, the United States guarantee positively and efficaciously to New Granada, by the present stipulation, the perfect neutrality of the before-mentioned isthmus, with the view that the free transit from the one to the other sea may not be interrupted or embarrassed in any future time while this treaty exists; and, in consequence, the United States also guarantee, in the same manner, the rights of sovereignty and property which New Granada has and possesses over the said territory.

13.—*Convention between the United States and Nicaragua, June 21, 1849 (concluded but not submitted to the Senate in consequence of the subsequent conclusion of the Clayton-Bulwer Treaty).*

The United States of America and the State of Nicaragua, having in view the grand design of opening and establishing through the territories of the latter State a passage and communication between the Caribbean Sea and the Pacific Ocean to facilitate the commerce between the two oceans and to produce other great results, and designing to establish, regulate, and define the grants, rights, privileges, and immunities that shall appertain to each other with reference to such great object by means of a treaty and special convention. For the accomplishment of these desirable purposes the President of the United States of America has conferred full powers on Elijah Hise, chargé d'affaires of the government of said States in Central America, and the State of Nicaragua hath likewise granted full powers to Sr. Lic^{do} Don Buenaventura Selva, chargé d'affaires of the government of the said State of Nicaragua near the United States legation in Central America, who, after having exchanged their said full powers in due and proper form, have agreed and do agree upon the following articles:

ARTICLE I.

It is solemnly agreed between the two high contracting parties that the State of Nicaragua doth grant to and confer upon the United States of America, or to a company of the citizens thereof, the exclusive right and privilege to make, construct, and build within the territories of the said State of Nicaragua, through or by the use and means of any of the streams, rivers, bays, harbors, lakes, or lands under the jurisdiction or within the limits of the said State, a canal or canals, a road or roads, either railways or turnpikes or any other kind of roads, for the purpose of opening a convenient passage and communication, either by land alone, or water alone, or by both land and water, and by means, if deemed proper, of locks and dams, or by any other mode of overcoming and removing the obstructions to the navigation of the said rivers, lakes, harbors, &c., between the Caribbean Sea and the Pacific Ocean, for the transit and passage of ships, steamers, sailing-vessels, boats, and vessels of all

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kinds, as well as vehicles of every sort used for the transportation and conveyance of persons and property and of goods, wares, and merchandise of every description, and the United States or the company which may be formed by virtue of such charters as shall be made as herein provided shall be permitted for the construction of said works to procure, take, and obtain within the territories of Nicaragua all kinds of materials, such as stone, timber, earths, and whatever else may be necessary and proper for the said purposes, free of any charge so far as the said materials may be procured on the lands belonging to said State.

Article II.

The State of Nicaragua cedes and grants to the United States, or to a chartered company of the citizens thereof, as the case may be, absolutely, all the land that may be required for the location and construction of said canal or canals, road or roads, and which may be necessary for the erection of buildings and houses of every description for the residence and accommodation of the engineers, superintendents, and laborers, and all others employed in the making and construction of the said works, or in governing, managing and controlling the same, and also for the erection of all such necessary buildings as may be requisite and proper for the purpose of storing away therein all the tools, machines, materials, and property of every description which may be required for the use in the construction, repairing, preservation, and management of said works, and should any portion of the lands or materials, or of the rivers, bays, ports, or their coasts or lakes, and their shores, which may be necessary and proper to be applied for the location and construction of said works and its appurtenances, belong to individuals, the State of Nicaragua agrees and undertakes to extinguish the titles thereto, and to procure the same upon a just principle of valuation for the aforesaid public works. The aforesaid cession and grant shall include a space of not less than three hundred feet on each side of the lines of said works, and extending all along the whole length thereof, so that ample space be secured on the margins of said works for the convenient use thereof. The just value of such of said lands and materials as may be private property at the date of this treaty will be paid for by said company.

Article III.

It is agreed that if the Government of the United States shall decide not to undertake and construct the said works, then either the President or Congress thereof shall have the power and authority to frame, enact, and issue a charter or act of incorporation containing such liberal provisions, and such grants of rights and privileges, not inconsistent with the rights of the contracting parties herein secured, as may be necessary, convenient and proper to effect the great objects in view, which charter and act of incorporation shall provide as follows:

1st. That the company which may be formed and organized under and by virtue of its provisions shall be composed exclusively of the citizens of one or both of the contracting parties, who may subscribe for and become the owners of the *whole* of the capital stock required for the said works. If, however, such citizens (thus having the preference) shall fail in due time to subscribe for and become the owners of the whole amount of the said capital stock, the residue thereof not taken by them may be taken, paid in, and owned by the governments of both or either of the contracting parties, or by the governments or citizens of any other nation, kingdom, or country.

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2d. That said company shall have the sole and exclusive right and privilege of constructing and owning such works as are herein named within the State of Nicaragua, provided the same are commenced and prosecuted within the time limited in this convention.

3d. It shall authorize the said company to build and construct said canal or canals, in such directions and of such width and depth as they shall in their discretion determine, and if the plan of roads is in part or in whole adopted the route, width, kind, and number thereof shall be determined upon by the said company as they may think proper.

4th. It shall provide that said company may make contracts, sue, and be sued as a corporation, with a given name and style, have a corporate seal, and engage in all such trade and business as may be proper and convenient in promoting all the operations required for the attainment of the ends in view.

5th. It shall contain provisions adequate for the organization of said company; it shall provide for the appointment of the officers, agents, engineers, surveyors, superintendents, and other employés of said company; and that said company may make and adopt all its own by-laws and regulations, so that the same be not in conflict with the provisions of this convention.

6th. It shall provide that said company may not only build and construct, but also enlarge, alter, repair, and reconstruct the said works as they may think proper, and that they may manage and govern the same and manage and control the financial affairs of the corporation.

7th. It shall provide that the said company shall make annual reports to the executive governments of the United States and the State of Nicaragua, setting forth their receipts and expenditures, and the condition, operations, and affairs of the said company.

8th. It shall provide that the management of the affairs of said company shall be vested and lodged in nine managers, five of whom shall be appointed by the company for a period of time, and in a manner to be regulated by the said charter, and in like manner two of the said managers shall be appointed by the President of the United States and two by the Executive Chief of the State of Nicaragua, and the said nine managers shall appoint their own president.

9th. It shall provide that the governments of either of the contracting parties may, through their committees, freely examine and investigate the affairs, business operations, and condition, financial and otherwise, of the said company, and for such purpose such committees may examine the books and papers of the company, and examine the officers thereof and other witnesses on oath, and make reports thereon to their respective governments.

10th. It shall provide that said company shall have the sole and exclusive right and privilege of conveying persons and passengers, and of conveying all steamers, ships, and vessels of all kinds, by towage or otherwise, and of transporting in the vessels of others or of their own all property, goods, wares, and merchandise, over, through, and upon said navigable waters, canal or canals, road or roads, which shall be improved, made, or constructed by them, at such rates, charges, duties, and tolls as the said company may think proper to establish; except, however, that the said charter shall further provide that all the vessels of war and all other public vessels of every description belonging to the governments of the two contracting parties, as well also as all other vessels which may be engaged in the permanent or temporary employment of the said governments to transport their troops, munitions of war, their public property of all kinds, and to convey their public agents, consuls,

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ministers, and all their officers, civil and military, shall be permitted to have the free and unrestricted use of the said canal or canals and navigable waters, and shall if necessary and required be conveyed through the same by the said company free of all costs and charge; said charter shall further provide also that the public mails of the contracting parties shall be conveyed and transported along and over the said works by the said company, in their own vessels or vehicles, free of cost or charge, and the contracting parties agree and stipulate with all solemnity that the aforesaid rights and privileges shall be enjoyed by each other perpetually, and that said charter shall provide accordingly; said charter shall also further provide that the citizens of the two parties shall enjoy and possess the right and privilege with their vessels, goods, merchandise, and property, and persons to pass and be conveyed through, upon, and over the said canals, roads, and navigable waters on terms at least as favorable as the subjects or citizens of any other nation or country.

11th. Said charter shall provide that the said works shall be commenced by said company within ten years after it shall be fully organized under said charter, or otherwise forfeit their privileges; so likewise if they shall after said works are begun declare their intention to abandon them and cease to prosecute the same for four entire successive years intentionally.

ARTICLE IV.

The charter aforesaid may contain such other provisions and grants of rights and privileges not in violation of or in conflict with any of the preceding or subsequent articles of this treaty as may be deemed necessary, convenient, or proper for the objects in view by either the President or Congress of the United Sates, and the same when framed and issued shall be approved and legalized by the Government of the State of Nicaragua, and no privileges or emoluments shall be granted in said charter to either of the contracting parties which shall not likewise be held and enjoyed to the same extent by the other.

ARTICLE V.

The Government of the United States shall have the right to erect such forts and fortifications at the ends and along the lines of said works, and to arm and occupy the same in such manner and with as many troops as may be deemed necessary by the said government for the protection and defense thereof, and also for the preservation of the peace and neutrality of the territories of Nicaragua, to whom pertains equal rights as inherent to her sovereignty.

ARTICLE VI.

The public armed vessels, letters of marque, and privateers, and the private merchant and trading vessels belonging either to the governments, or the subjects, or citizens of nations, kingdoms, or countries with which either of the contracting parties may be at war, shall not, during the continuance of such war, be suffered or allowed to come in the ports at the terminations of said canals nor be allowed to pass on or through the same, on any account whatever; neither shall the vessels of neutral nations, whether public or private, be allowed to convey by means of said canal articles contraband of war, to or for the enemies of either of the contracting parties, or to or for other nations or states who may be

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at war with each other; nor shall the vessels of countries which are engaged in war with each other, owned or employed and armed by them to carry on such war, during the continuance be allowed to pass through the said canals. The public and private vessels of all nations, kingdoms, and countries which are in peace with both the contracting parties and with each other shall be permitted to enter said ports, and to pass or be conveyed through the said canals, but they shall be subject, however, to the payment of such duties, charges, and tolls as may be established by the proprietors of the said works.

Article VII.

The State of Nicaragua may, of course, exercise her right of erecting and establishing anywhere on the routes or margins, or at the points of termination of said works, custom-houses and warehouses, and to collect duties, according to her own laws, upon the goods, wares, and merchandise imported for sale or consumption into her territories by means of said works, and the State of Nicaragua may adopt and enforce all needful rules and regulations to prevent smuggling or the introduction of contraband goods in her territories; but it is expressly agreed that the State of Nicaragua shall not impose, enforce, or collect any taxes, charges, or duties of any kind or amount on the persons (for passports), or property, or on goods, wares, or merchandise of any class or kind on their travel or transit over, or for passing through her territories by means of said canals, roads, &c., provided the said property, goods, wares, and merchandise shall be not sold or not introduced for sale or consumption into the said State, but be exported to other states or countries.

Article VIII.

The ports at the points of termination of said works shall be free to both the contracting parties and their citizens, respectively; and their public and private vessels of all kinds shall enter and remain therein and depart therefrom and not be subjected to the payment of any port charges, tonnage duties, or other imposition whatever.

Article IX.

The persons employed in the location and construction of said works, the owners thereof, and all their agents, and officers, and employés of every sort, shall be under the special protection of the governments of both the contracting parties, and they shall not be subject to any kind of taxation on their persons or property, nor shall they be required to pay any contributions or to perform any civil or military duty or service whatever for either of the two governments during their employment about the said works; and all provisions, including wines and liquors, and all merchandise imported into Nicaragua for their clothing and subsistence shall be free and exempt from all duties and taxes, direct or indirect; and all such articles, property, stores, tools, implements, and machines, &c., &c., as may be required for surveys and explorations, and for locating and constructing said works, shall be imported into the State of Nicaragua free from all taxes and duties whatever thereon, and the vessels employed in the importation of the said subsistence, clothing, tools, implements, &c., &c., shall also be free and exempt from all port charges and tonnage duties in all the ports, rivers, lakes, or harbors on the coasts or within the limits of the State of Nicaragua; and entire

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liberty is to be enjoyed by the said company to make full and complete surveys and explorations of the ports, bays, seas, lakes, rivers, and territories of Nicaragua, in order to the location of said works and for the procurement of lands and materials necessary for the same, in which explorations and surveys Nicaragua, at her own expense, may participate, if she thinks proper.

Article X.

The State of Nicaragua grants and cedes to the United States or to a company to be chartered as herein provided, as the case may be, all the land within two leagues square belonging to the said State, and which may be unappropriated at the date of this treaty, at each point of the terminations of said works at the seas on each side, that is to say, three miles square on each side of both ends of said works, to serve for the sites of two free cities which it is anticipated will hereafter be established at said points, the inhabitants of which free cities shall enjoy the following rights and immunities:

1st. They shall govern themselves by means of their own municipal government, to be administered by officers, legislative, executive, and judicial, chosen and elected by themselves according to their own regulations.

2d. They shall have the right of trial by jury in their own city courts.

3d. They shall have the most perfect freedom of religious belief and of religious worship, public and private.

4th. They shall not be required to pay any tax upon their real estate or other property except such as may be imposed by the municipality and collected for the city treasury, and to be used and applied for the benefit of said cities.

5th. They shall not be required to perform any military services, except for the defense of the said cities in which they may reside.

6th. The said cities will of course be under the qualified dominion and government of the State of Nicaragua, not to be exercised in any manner, however, in violation of their rights and immunities as herein specified; and said free cities shall be under the protection of the governments of both the contracting parties.

Article XI.

The State of Nicaragua agrees that the United States shall have, possess, and enjoy forever the following rights and privileges; that is to say, the right and privilege to pass, convey, transport, and send through all or any part of the territories and dominions of the State of Nicaragua, on land or water, from ocean to ocean, by means of her ports bays, rivers, lakes, and roads, troops, infantry or cavalry, all kinds of arms, artillery, and munitions of war of all kinds, her public property of every description, public officers, civil and military, consuls, ministers, dispatch agents, her public mail and mail agents, and all other employés of the Government of the United States of America; and the same shall all and each be permitted to pass, be sent, and be conveyed through said State, in any manner, as aforesaid, in the public armed vessels of the United States, and in all such other vessels or vehicles, public or private, which may be in the temporary or permanent employment of the Government of the United States for any of the purposes aforesaid, or in any other way, free from all cost and exempt from all taxes, duties, imposts, charges, or exactions of any kind whatever, either on the persons, property, vehicles, or vessels aforesaid; and all the

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aforesaid privileges and the said free rights of way and of transit shall be held, used, and enjoyed by the United States of America (but not by any other nation, state, or government, except Nicaragua) without cost or charge, and freely, whether the same be made through the dominions and territories of Nicaragua as they now exist, or whether the said troops, munitions of war, public officers, agents, employés, mails, public property, vehicles, and vessels, &c., shall be sent, transported, or conveyed by means of improved navigable rivers, canals, or turnpikes, or railroads, or any other public improvements which may be hereafter made in the State of Nicaragua, either by the governments or citizens of the contracting parties, or by the governments, citizens, or people of any other nation, kingdom, or country; and the citizens of the United States shall have and enjoy all the rights and privileges of travel, passage, transit, and conveyance for themselves and their property and vessels of all kinds through the territories and dominions of the State of Nicaragua as they now exist or through such canals or roads, railways or turnpikes, or other improvements as may be hereafter made in said state, upon terms and conditions in every particular as favorable as those enjoyed by the citizens of Nicaragua, or by the citizens of any other nation, kingdom, or country.

ARTICLE XII.

In consideration of the premises as set forth in the foregoing eleven articles, the United States of America doth solemnly agree and undertake to protect and defend the State of Nicaragua in the possession and exercise of the sovereignty and dominion of all the country, coasts, ports, lakes, rivers, and territories that may be rightfully under the jurisdiction and within the just and true limits and boundaries of the said state; and when the circumstances and condition of the country may require it the United States shall employ their naval and military force to preserve the peace and maintain the neutrality of the said coasts, ports, lakes, rivers, and territories, and to hold and keep the same under the dominion and sovereignty of the Government of the State of Nicaragua or of the government of such state or political community of which Nicaragua may voluntarily become a member, or with which, of her own accord, she may hereafter be identified: Provided, however, that the said sovereignty and dominion of the State of Nicaragua, so guaranteed as above, shall not be held, maintained, or exercised by said state in any such manner as to conflict or to be inconsistent with the rights and privileges herein secured to the United States and her citizens; and to prevent all misunderstanding, it is expressly stipulated that the United States are not bound, nor do they undertake, to aid, assist, or support Nicaragua in offensive wars or wars of aggression waged and carried on by said state with foreign powers or with the neighboring states, outside of her just limits, and beyond the territories rightfully within her jurisdiction; but the contracting parties agree and undertake that, if necessary, the naval and military forces and the entire means and resources of both the contracting parties shall be employed to put down all wars and bloodshed arising therefrom, and to suppress all violations of the peace and interruptions of the neutrality of the said State of Nicaragua; and for further explanation it is understood that if the State of Nicaragua should become involved in a war with any foreign power or neighboring state within her own borders, to defend the territories rightfully belonging to her, or to recover such territories wrongfully wrested from her, the United States engages to defend Nicaragua in carrying on such war within her own rightful limits, provided, how-

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ever, that such war is just, and provided, moreover, that if peace is prevailing in the State of Nicaragua, no wars or hostilities shall be first commenced in said state by either of the contracting parties without previous friendly consultations, and unless with the consent of both their governments, given according to their laws and constitutions, respectively.

ARTICLE XIII.

The contracting parties, in negotiating this treaty, have had in view the contract entered into between the State of Nicaragua, through their commissioner, José Trinidad Muños, and a certain company styled "Compania de transito de Nicaragua," composed of certain persons named Willard Parker, Simeon H. Ackerman, Asher Kurshecdt, and David J. Brown, through the said David J. Brown as their agent, which contract was executed and signed by said commissioner and agent on March 14, 1849, and ratified by the legislative power of the State of Nicaragua on March 16, 1849, and approved by the executive power of said state on the 17th of March, 1849. Now, in view of this contract, it is further agreed as follows:

1st. If the above-named company shall accede to this treaty *in all its parts*, or if they shall voluntarily abandon their contract, or if they shall forfeit their rights under said contract by failing to perform and execute the terms and conditions thereof in due time, then this treaty shall remain and be valid in all its parts.

2d. But if the said company shall not accede to this treaty *in all its parts*, and if they shall not abandon or forfeit their said contract, but if they shall execute the same and comply with its terms, and build the said works all in the time required, then, in such case, this treaty in all its parts, wherein the State of Nicaragua grants to the United States, or to a company to be chartered by the President or Congress thereof, the exclusive privilege to be the constructors and owners of said works, shall be void, and of no force or effect.

3d. Nevertheless, in such case as is set forth in the second section next preceding, if said company shall accede to the fifth (5th), the sixth (6th), the eighth (8th), and the eleventh (11th) articles of this treaty, and shall consent and agree that the United States of America, and the citizens thereof, shall have and enjoy all the rights and privileges therein granted to them, and as defined also in the tenth (10th) section of the third (3rd) article, then in such case the above-named fifth (5th), sixth (6th), eighth (8th), and eleventh (11th) articles of this treaty, as also the twelfth (12th) article thereof, shall be valid and obligatory between the contracting parties.

4th. But if in such case existing as is set forth in the second section above the said company shall refuse to accede or agree to the said fifth (5th), sixth (6th), eighth (8th), and eleventh (11th) articles hereof, as specified in the preceding third section, then this treaty shall be altogether void and of no force or effect whatever.

But the contracting parties, anticipating that said company, being satisfied that the great enterprise in view cannot succeed unless under the protection and patronage of the two governments, will concur and co-operate with them in the promotion thereof, they are assured that this treaty will meet their cordial approbation, and that it will be fully acceded to by them.

The present special convention between the United States of America and the State of Nicaragua shall be approved and ratified by the President of the United States of America, by and with the advice and con-

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sent of the Senate thereof, and by the Director of the State of Nicaragua, with the consent of the Legislative Chambers thereof, and the ratifications shall be exchanged in the city of Washington, Santiago de Managua or Leon, within the term of two years counting from this date.

In faith whereof, we, the plenipotentiaries of the United States of America and of the State of Nicaragua, have signed and sealed these presents in the city of Guatemala, on the twenty-first day of June, in the year of our Lord, one thousand eight hundred and forty-nine, in the seventy-third year of the independence of the United States of America, and in the twenty-eighth year of the independence of the State of Nicaragua.

[SEAL.] ELIJAH HISE.
[SEAL.] BUENAVA SELVA.

14.—*Contract between Nicaragua and the American Atlantic and Pacific Ship-Canal Company, signed at Leon, August 27, 1849, containing the grant which was subsequently accepted under Article VII of the Clayton-Bulwer Treaty.*

The Supreme Director of the State of Nicaragua, and "The American Atlantic and Pacific Ship-Canal Company," composed of Cornelius Vanderbilt, Joseph L. White, Nathaniel H. Wolfe, and their associates, being always citizens of The United States, desiring to settle the terms of a contract for facilitating the transit across the Isthmus of Nicaragua from the Atlantic to the Pacific Oceans, by means of a ship-canal or railroad, have appointed as Commissioners on the part of the Supreme Director of the State of Nicaragua, Messrs. Hermenegilda Zepeda and Gregorio Juares, and on the part of the said company Mr. David L. White, with full powers to arrange and conclude a contract for the above-named purposes; which Commissioners having exchanged their respective powers, have agreed upon and concluded the following Articles:

ART. I. The State of Nicaragua grants to the said Company the exclusive right and privilege of constructing a ship-canal across its territory, by a single route, and at its own expense, from the port of St. John's of Nicaragua, or any other more feasible point on the Atlantic, to the port of Realejo, Gulf of Amapala, or Fonseca, Tamorinda, St. John's of the South, or any other point on the Pacific Ocean which the engineers of the Company may decide upon, by means of the St. John's river, Lake Nicaragua, River Tipitapa, Lake of Leon, or any other rivers, lakes, waters, and lands situated within its territory, with the object of connecting the two oceans, and to make use of, for its construction and navigation, said rivers, lakes, waters, and lands, both public and private. And the State also grants to the Company the exclusive right to the administration, management, and control of the said canal, according to the following Articles:

II. The dimensions of the canal shall be such as may be necessary for the passage of vessels of all sizes, and the point at which it shall terminate on the Pacific, in the event that the engineers of the Company shall decide upon two or more points as equally practicable, shall be that one most consistent with the mutual interests both of the State and the Company.

III. The Company binds itself to construct, at its own expense, in the harbors at the extremities of the route of said canal, custom-house buildings of the necessary capacity for the use of the State and Company.

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IV. The exclusive rights and privileges herein granted to the said Company by the said State, shall be enjoyed by the same for the fixed period of 85 years, counted from the day in which the canal shall be completed and put in use.

V. The Company hereby agrees to pay to the said State for the said grant the following sums of money, namely:

First. Ten thousand dollars by draft on the said Company in the city of New York, as soon as this contract shall be ratified by the Legislature of the State.

Second. Ten thousand dollars at the expiration of one year from this same date; and 10,000 dollars each year thereafter until the completion of the said canal; the above sums to be paid to the State in the city of Leon, or in the city of New York, as the State may elect. Also the said Company makes a free donation to the said State of 200,000 dollars of stock in the enterprise, which shall be delivered to the State as soon as the certificates of stock shall be distributed by the Company.

VI. Said State shall receive for its proportion of the income of said canal, after the same shall be put in use, the following interests, namely: for the first 20 years, 20 per cent. annually out of the net profits, after deducting therefrom the interest of the capital employed in its construction at the rate of 7 per cent. per annum, and 25 per cent. each year thereafter out of said net profits, after deducting the said 7 per cent., until the expiration of the full period of the term hereinabove granted. And the State shall also receive 10 per cent. out of the net profits, without any deduction of interest, of any route which the Company may establish between the two oceans, whether it be by railroad, or carriage-road, or by any other means of communication, during the 12 years herein granted for the construction of said canal.

VII. The said Company shall be bound to make and present an annual report and account to the Government of Nicaragua, setting forth the receipts and expenditures, as well as a statement of the condition of the works of the canal; which report shall be certified by the proper officers of the Company. The State, however, shall have the right, through any Commissioners which it may appoint for that purpose, to inspect and examine at any time the books of the Company, to satisfy itself of the correctness of the said receipts and expenditures.

VIII. It is hereby stipulated that the State of Nicaragua shall have the privilege of taking stock in the said canal, to the amount of 500,000 dollars, within 1 year from the date of the ratification of this contract, which it may distribute, as it may deem proper, among any of its native citizens, or the citizens of the adjoining States, upon giving notice to the Company of such intention through The United States' Consul in the city of Leon.

IX. It is further stipulated that a majority of the stock of said canal shall always be owned by citizens of The United States; in evidence of which the stock-books of said Company shall always be open to inspection at the principal office of the Company, wherever the same may be located.

X. The Company binds itself to commence the preliminary surveys for said works within the period of 12 months from the date of the ratification of this contract, and also to complete the said canal within 12 years from the same date. But if any fortuitous or unforeseen events, beyond the control of the Company,—as for example, earthquakes, epidemics, wars, or any other events of this nature,—should appear during the progress of the work to suspend its execution, the time thus lost

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shall not be reckoned as a part of the stipulated time above given for its completion. In case such event should occur, the Company shall give immediate notice to the Government of the same, for the purpose of deciding, in connection with the Company, upon the nature of such event.

XI. If none of the events which are expressed in the preceding Article should occur, and the work shall not be completed within the said period of 12 years, then, whatever may have been done by the Company to that time in the prosecution of the work, shall be forfeited to, and become the property of, the State without any indemnity.

XII. The State gives to the said Company the right to take, free of any charge or indemnity, any of the public lands or forests within the State, all the wood, stone, lime, timber, or any other materials which it may require for the construction and use of said canal and its dependencies. And the said State hereby further gives to the Company the right to take and make use of such portions of the public lands as it may require for the establishment or erection of houses, stores, docks, wharfs, stations, and all other useful objects connected with the works of said canal.

XIII. In case the Company shall require any materials, such as wood, lime, stone, &c., which may be found in or upon the lands of particular individuals, it shall be obligated to pay for the same at such price as may be agreed upon between the Company and such individuals. But all the lands which may be required for the passage of the canal in its entire route, shall be at the expense of the State, and the Company shall not be liable to pay any indemnity for the same.

XIV. All the articles that the Company may require, both for the surveys and explorations, and for the construction and use of the works of the canal, such as machines, instruments, tools, &c., and all other necessary materials, shall be admitted into the State free of duties of all kinds, and may be discharged in any of its harbours, or at any other point within its territory that the Company may select; in this last case, however, giving notice of such intention to the proper Government officer. But the Company shall have no right to introduce within the territory of the State any goods, merchandize, or any other articles of commerce for sale or exchange without paying the duties established by law. And they are also prohibited from importing any articles or materials, which may be monopolised or prohibited by the State, for any purpose, except for the use of the works of the canal.

XV. The State binds itself to facilitate and aid in every possible way the engineers, contractors, employés, and labourers who may be employed in the explorations and surveys of the route, and in the construction of the works of the canal; and to this end stipulates that all citizens of the country who may be so employed by the Company, shall be free and exempt from all civil or military service of the State whatsoever; but to entitle them, however, to the right of exemption from such military service, they shall have been previously in the employ of the Company, for at least the period of 1 month. The State also guarantees to all foreigners who may be employed on the works of the canal the same rights, liberties, and privileges as are enjoyed by inhabitants of the country; and also that they shall not be molested or disturbed in their labours while thus employed, by any internal commotions or disorders of the country; and at the same time that they shall be free and exempt from all taxes, duties, or direct contributions whatsoever during the time they may be in the Company's employ.

XVI. The said Company agrees to receive from the State as labourers upon the works of the canal any convicts who may be capable of labour,

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upon such terms as may be agreed upon between the Company and the State.

XVII. The said Company agrees to transport across the said canal all passengers, goods, merchandize, and materials of every description which may be intrusted to it; and also stipulates that the canal shall be open to the transit of vessels of all nations, subject to fixed and uniform rates of tolls that may be established by the Company.

XVIII. The Company shall establish a tariff of fees or tolls for the transportation of all passengers, goods, wares, merchandize, and property of every description, and for vessels of all kinds passing through or along the said canal, which shall have the force of law from the moment in which it shall be communicated to the Government of Nicaragua, which shall be obliged to sanction the same within 8 days after its reception; and at the same time, with a view to induce the largest and most extended business by this route, the said Company agree to fix the said tariff of fees or tolls for the same, at the lowest possible rate consistent with the mutual interests, both of the State and the Company; and in case that the Company should determine at any time to alter such tariff, it shall be incumbent upon it to give 6 months' previous notice of such determination in the State paper of Nicaragua and in the principal seaport towns of The United States.

XIX. The rate of tolls and charges for the transit of the products and manufactures of the State of Nicaragua and the adjoining States shall be regulated by a particular and more favourable tariff, which shall be agreed upon between the State and the Company.

XX. The State grants to all steamers and vessels of the Company during the continuance of this contract, the right of ingress and egress to, from, and through all its harbours, rivers, and waters both on the Pacific and Atlantic Oceans, and the interior, and the use of the same free of all duties or charges of any kind whatsoever, as, for example, anchorage, tonnage, &c.

XXI. The State hereby stipulates that all vessels and steamers of the Company, and also all goods, merchandize, manufactured articles, or any other property which may be conveyed therein passing through the said canal from one sea to the other in either direction to any foreign country, shall be free and exempt from all kinds of Government duties or taxes whatsoever, and shall also be secure and protected from all interruption or detention in their course on the part of the State.

XXII. The Company shall furnish to the State annually a list of all its vessels employed in the navigation of the route, containing the names and descriptions of each of such vessels, which shall be registered in the archives of the State, and thereupon the State shall give to the Company a separate certificate of the register of each one of the said vessels, signed by the proper officer of the Government, which certificate shall serve always as a passport for said vessels through all the harbors of the State, upon presenting the same to the custom-house or harbour officer.

XXIII. The exclusive right which the Company has acquired by this contract of navigating the said lakes, rivers, and waters of the said State by means of steam vessels, from one sea to the other, is understood as not to exclude the natives of the country from free interior navigation by means of sailing, or any other vessels, excepting steam-vessels.

XXIV. The Company binds itself to transport by the said canal, on board of any of its vessels, all the principal officers of the Government and its subalterns, in case of Government necessity, from one point of

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said route to any other one at which said vessels may stop, without any charge to the State therefor.

XXV. The Company is to convey by any of its steamers or vessels, free of cost or charge over the route of the said canal, all the official correspondence of the State, in consideration of which the State agrees not to collect or recover any postage or duties of any kind upon any of the correspondence of the said Company.

XXVI. The Company binds itself to construct, at its own expense, bridges upon that part of the canal that may be made between the lakes and the Pacific, upon such principal highways as may be agreed upon between the State and the Company. The said State, with the consent of the Company, shall establish rates of toll or charges upon such persons or things as may pass over said bridges, the profits from which shall be appropriated to redeem the capital invested in their construction, and the interest thereon, at the rate of 7 per cent. per annum; and when such capital and interest shall have been reimbursed to the Company, then the profits shall be divided equally between the State and the Company for the remaining period of this contract, but such bridges shall continue under the control and management of said Company.

XXVII. The State of Nicaragua, with the object of facilitating the colonization of the lands contiguous to the River St. John, and the adjacent rivers, and of the canal which in or along it may be constructed, makes a free donation to the Company of 8 stations or sections of land to be located at such points upon either one or both of the banks of the said river or canal as the company may elect, each one of which stations shall be of 6 English miles in length, fronting upon the river or canal, and 6 miles in width, measured from the bank of the canal or river towards the interior. And the State further grants to the Company the right of alienating the lands which compose said sections to settlers, or any other person or persons who may wish to locate themselves upon the same. Said sections of land are granted upon the following conditions:

1. They shall be located by the Company in such a manner that they shall be at least 3 English miles distant from each other.

2. That no one of them shall be located within the distance of 4½ English miles from the mouth of the St. John's river.

3. The State reserves to itself the right to such points as shall be necessary for its military fortifications and public buildings.

4. That the lands granted shall not be alienated to settlers until 6 months after the commencement of the survey of the route of the said canal.

5. The State reserves to itself the supreme dominion and sovereignty over said lands and their inhabitants.

6. That said lands shall not be alienated by the Company to any Government whatsoever.

XXVIII. The colonies which the Company may establish upon said lands shall be colonies of Nicaragua, and thereupon the settlers shall be subject to the laws of the State the same as the natives of the country, being, however, exempt for the term of 10 years from all taxes and direct contributions, and from all public service, as soon as each colony shall contain at least 50 settlers.

XXIX. The State further agrees that in case any event may hereafter occur, as named in the preceding Article X, to suspend or prevent the construction of the canal, or if the said contract shall become forfeited, or annulled by either or both of the parties, and also in case the said

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contract shall continue in force for the full period of 85 years, mentioned in the preceding Article IV, the said State shall always acknowledge as private property the lands which may have been alienated or ceded by the Company to settlers or other persons in virtue of the legal title which the Company has acquired by this contract to the said lands.

XXX. The Company shall have the exclusive right to construct rail or carriage roads, and bridges, and to establish steam-boats and steam-vessels on the said rivers and lakes as necessary accessories to and in furtherance of the execution of the canal; but the Company hereby stipulates and agrees that in case the construction and completion of the said canal or any part of it becomes impossible by any unforseen event or insurmountable obstacle of nature, to construct a railroad or rail and carriage road, and water communication between the two oceans, provided the same may be practicable, within the same period as is stipulated for the building of the said canal, and subject to the same terms, conditions, regulations, and restrictions, as far as they can be made applicable to the same.

XXXI. The State hereby binds itself not to sell or dispose of any of its public lands located upon or near the River St. John's, or upon or near any of the routes or points designated in Article 1 of this contract, until after the surveys shall have been made, and the route determined of the said canal.

XXXII. The State also binds itself to protect and defend the Company in the full enjoyment of the rights and privileges granted in this contract, and also binds itself not to contract with, or cede to, any Government, individual, or companies whatsoever the right of constructing a ship-canal, railroad, or any other communication across its territory between the two oceans, or the right of navigating by means of steam-vessels any of its rivers or lakes which may be occupied by this Company while this contract continues in force. But, should this contract become forfeited or annulled, then the State shall be privileged and free to contract with any other individuals or companies as it may deem proper.

XXXIII. In case any dispute or controversy shall arise, during the existence of this contract, between the State and the Company, the same shall be determined by a reference to 5 Commissioners, to be chosen in the following manner, viz., 2 to be named on the part of the State, 2 named by the Company, and the fifth to be selected by the 4 thus appointed, who shall hear and determine the matters in controversy, and decide upon the same; which decision of the said Commissioners shall be final and without appeal, and binding upon both the State and the Company.

XXXIV. It is further provided, that in the event of the 4 Commissioners thus chosen not being able to agree upon the selection of the fifth, the State and the Company shall then choose 3 individuals, out of which number they shall select one to act as such fifth Commissioner; but should they disagree in such selection, then the choice shall be made out of said number by lot.

XXXV. After the period of the 85 years herein granted to the Company shall have expired, the Company shall surrender to the State the canal or roads, and its dependencies, revenues, and privileges, free from all indemnity, for the capital which may have been invested in the said work. But it is nevertheless stipulated that the Company shall receive 15 per cent. annually out of the net profits of the canal for the period of 10 years after such surrender, provided the cost of the same shall be less than 20,000,000 of dollars; but should the cost be 20,000,000 of dol-

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lars or more, then the Company shall receive said 15 per cent. for the period of 20 years after such surrender.

XXXVI. It is expressly stipulated on the part of the State of Nicaragua that the vessels, products, manufactures, and citizens of all nations shall be permitted to pass upon the proposed canal through the territory of the State, subject to no other or higher duties, charges, or taxes than shall be imposed upon those of The United States; provided always, that such nations shall first enter into such Treaty stipulations and guarantees respecting said canal as may hereafter be entered into between the State of Nicaragua and The United States.

XXXVII. It is finally stipulated that this contract, and the rights and privileges which it confers, shall be held inalienable by the individuals composing the Company herein named and their associates; and that it shall never, in whole or part, be transferred or assigned to any other Company, nor in any way become dependent upon or connected with any other Company, whatever may be the objects of the same.

XXXVIII. The present contract shall be ratified by the Legislature of the State in the shortest possible period; and on the part of David L. White shall be ratified immediately after, as agent of the Company which he represents, in virtue of the powers conferred on him to this effect.

In testimony of which we, the respective Commissioners, have signed and sealed the present contract in triplicate, in the city of Leon, in the State of Nicaragua, the 27th day of August, in the year of our Lord 1849.

(L.S.) HERMEND. ZEPEDA.
(L.S.) GREGORIO JUARES.
(L.S.) DAVID L. WHITE.

15.—*Mr. Crampton to Lord Palmerston.*

WASHINGTON, *September 15, 1849.* (Received October 3.)

MY LORD: Mr. Clayton having requested me to call upon him at the Department of State, said that he wished to converse with me frankly and confidentially upon the subject of the proposed passage across the isthmus, by way of Nicaragua and the River San Juan, with regard to which he had long felt a great deal of anxiety—an anxiety lately very much increased by intelligence he has received from Mr. Elijah Hise, who has arrived at Washington from Guatemala, where he has been for some years chargé d'affaires of the United States.

Mr. Hise has, it appears, upon his own responsibility, and without instructions either from the late or from the present administration, signed, on the part of the United States, a treaty with the state of Nicaragua, by which the latter grants to the United States an exclusive right of way across her territories, including therein the River San Juan, for the purpose of joining the two oceans by a canal across the isthmus. The treaty contains a number of provisions, such as stipulations for the construction of forts and military works upon the banks of the San Juan for the protection of the proposed passage. These Mr. Clayton enumerated to me; but he read to me, at length, the article which he regards as the most objectionable in the treaty, by which it is stipulated that the United States guarantees to Nicaragua forever the whole of her territory, and promises to become a party to every defensive war in

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which that state may hereafter be engaged for the protection of that territory.

To the whole of this treaty, as well as to the "absurd stipulation" which he had just read, Mr. Clayton said that it was scarcely necessary to remark that he was entirely opposed. His views and wishes with respect to the construction of a canal across the isthmus by way of Nicaragua were, he observed, known to me, and had been, as I was aware, communicated by his direction to Her Majesty's Government; these would, he trusted have convinced your lordship that the Government of the United States have no views of exclusive advantage to themselves in this matter. He felt most anxious that the signature of the present treaty by Mr. Hise should not produce a contrary impression in any quarter; and with this view he proceeded to read to me a portion of the instructions which have been given to Mr. Squier, who has been lately sent as United States chargé d'affaiers to Nicaragua. By these Mr. Squier is directed not only not to negotiate any treaty with that government on the subject of a passage across the isthmus, but not to give his support or countenance to any contract entered into by private citizens of the United States with Nicaragua on that subject, of an exclusive nature, or such as might bring the United States into collision with any other power.

The signature of the present treaty has, Mr. Clayton remarked, placed the Government of the United States in a most embarrassing situation. You know, he said, that the government have no majority in the Senate; you know that the treaty will be called for by Congress; the substance of it, indeed, has already found its way into the newspapers; you are aware of the opinion which, whether right or wrong, is generally entertained in this country of the claim of the Mosquito chief to any part of the territory claimed by Nicaragua; and you can form an idea of eagerness with which the party opposed to the government will avail themselves of the opportunity of either forcing us into collision with Great Britain on this subject, or of making it appear that we have abandoned, through pusillanimity, great and splendid advantages fairly secured to the country by treaty. It will require great caution on both sides, said Mr. Clayton, to prevent the two governments being brought into collision on account of this intrinsically worthless country.

Mr. Clayton concluded by saying that he would immediately send for Mr. Abbott Lawrence, who is now at Boston preparing for his departure for England on the 26th instant, and that he would put him into full possession of the views of the United States Government with regard to this subject. He begged me in the meantime to communicate the substance of what he had said to me to your lordship.

I have, &c.,

JOHN F. CRAMPTON.

Viscount PALMERSTON, G. C. B.

16.—*Mr. Crampton to Lord Palmerston.*

[Extract.]

WASHINGTON, *October 1, 1849.* (Received October 13.)

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Mr. Clayton, nevertheless, yesterday took an opportunity of entering upon the subject with me, with greater earnestness and at greater

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length than on any previous occasion; and I am the more anxious to report accurately to your lordship the substance of his remarks, from the circumstance that the President, who happened to come into Mr. Clayton's room upon other business, on being informed of the subject on which we were engaged, waved all ceremony and joined in our conversation with great frankness, and every appearance of a wish to make proof of the most friendly feeling towards Her Majesty's Government, by evincing a disposition to deal with entire openness with regard to the affair in question.

The junction of the two oceans by a canal, Mr. Clayton observed, was an object so important to the whole of the commercial world, that it was matter for surprise that an attempt had not long since been made to effect it. The increase of population on the western coast of this continent had, however, now rendered it certain that such an attempt would ere long be made. The Government of the United States are strongly in favor of such an undertaking; but they are as earnestly opposed to its execution being made a subject for jealousy, by an attempt on the part of any one nation to monopolize to itself either the credit due to such an enterprise, or the advantages to be derived from it when effected. It should, in their view, be rather made a bond of peace and good understanding, by being brought about by a combined effort, and for the general benefit of mankind.

That great applause in certain quarters, and a certain sort of popularity, might be gained by the government of either of the countries by an attempt to effect this work upon a principle of exclusive advantage, Mr. Clayton observed, there could be no doubt. But the United States Executive disclaimed any such wish, but desired, on the other hand, not to be driven to adopt any measure for obtaining such exclusive advantage. Such popularity or applause would, in their opinion, be dearly bought by the jealousies and misunderstandings between nations which would be the inevitable result; and this it was the study of the United States Government to avert.

The two countries, Mr. Clayton continued, most deeply interested in this work are, there can be no doubt, Great Britain and the United States. Their interest in it, indeed, seemed to him to be identical. Their entire agreement with regard to it was therefore an object of paramount importance.

It was with this feeling, he said, that the United States Government would entirely disapprove of the treaty signed by Mr. Hise with the State of Nicaragua, unless they were driven to adopt it to counteract the exclusive claim of some other country. That treaty both secured exclusive advantage to the United States with regard to the proposed canal which they did not wish, under any circumstances, to possess, and threatened, besides, to bring them into collision with Her Majesty's Government upon the Mosquito question pending between them and the State of Nicaragua.

What the United States Government would now propose, therefore, was this: That the United States should abandon the treaty signed by Mr. Hise; and, instead of ratifying it, should propose, simultaneously with Her Majesty's Government, another treaty to Nicaragua, by which no exclusive advantage should be conferred on any party, and the great object of which should be to guarantee the safety of a company of capitalists, to whom a charter should be granted by Nicaragua on reasonable terms for the execution and maintenance of the work. This company Mr. Clayton would have formed upon no exclusive principle as regards the shareholders, while it should be regulated as regards the

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rate of toll to be levied, and on such other points as might appear necessary, by the governments guaranteeing its safety and undisturbed possession. The Goverment of Nicaragua would of course have no power to levy any other dues than custom duties on articles imported for her own consumption; the transit from ocean to ocean being left free. The sole fact of the existence of such treaties between Great Britain and Nicaragua, and between Nicaragua and the United States, would, in Mr. Clayton's opinion, be quite sufficient to insure the undisturbed execution of the work; but he would propose that every other power which should conclude a similar treaty with Nicaragua, and offer a similar guarantee, should be admitted on equal terms to all the advantages of the canal. It would be by such an arrangement that the character which it ought to possess would be conferred on this great undertaking.

These considerations, if fairly laid before Her Majesty's Government, would, the United States Government are persuaded, induce Her Majesty's Government to consent to make such an arrangement with regard to the Mosquito claim as would prevent its being an obstacle to the design in question. The Mosquito claim, if disconnected with the question of a passage across the Isthmus, is not, the United States Government apprehends, one to which any great importance can be attached by Her Majesty's Government: and they cannot perceive that if the object which they think it probable that Her Majesty's Government, in common with themselves, have in view, of preventing an injurious monopoly being established by any one nation in the quarter in question, is obtained, there can be any real difficulty in arranging the question as far as the Mosquito nation is involved in it.

* * * * * * *

Mr. Clayton then recurred to the embarrassing situation in which the friends of this great enterprise would be placed should Her Majesty's Government continue to oppose the Mosquito claim to the arrangement now proposed. The existence of the treaty signed by Mr. Hise, and the privileges conferred by it on it, by the United States, are, he said, no secrets in the country. The universal feeling would be for its adoption; and a reason for clamoring for its instant ratification would be, that this might defeat what would be represented and believed to be a plan on the part of Great Britain to secure for herself a monopoly of the most eligible passage between the two oceans. The Executive Government of the United States would be without excuse for withholding the treaty from the consideration of the Senate; and it is impossible to doubt, under the influence of the public excitement, which there is already an evident design to rouse with regard to this question, what would be the result. On the other hand, were the administration enabled to submit to Congress an arrangement such as is now proposed, and in which Her Majesty's Government would be in friendly concurrence with the United States Government for this great work, every pretext would be taken away from the most unreasonable, and every chance of future misunderstanding between the two governments avoided. Mr. Clayton considered that this question could never be settled amicably unless both Great Britain and the United States withdrew all claim to the territory of Nicaragua and Costa Rica. If either of the two governments held possession of the country on either side of the canal, it would hold an inadmissible advantage over the other; in a word, said he, let us both abandon all claim to what is called Nicaragua and Costa Rica, and lend the countenance of both governments to the construction of a ship-canal, if it be found to be practicable; if you refuse this offer, we are driven in self-defense to adopt the treaty.

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In the whole of these observations General Taylor cordially concurred; the attempts, he remarked, which were making and would be made in many quarters to produce a misunderstanding or a collision between the two governments on this matter were, in his opinion, only to be met by perfect frankness and fair dealing; it was his earnest wish, therefore, that the matter should be laid in this spirit before your lordship, and he expressed an anxious wish that the question might be promptly arranged equally to the honor and advantage of both countries.

JOHN F. CRAMPTON.

Viscount PALMERSTON, *G. C. B.*

17.—*Mr. Crampton to Lord Palmerston.*

WASHINGTON, *November 4, 1849.*—(Received November 19.)

MY LORD: I had the honor of forwarding to your lordship, with my dispatch of the 15th ultimo, the copy of a contract between an American company and the Government of Nicaragua for the formation of an interoceanic canal by way of the River St. John and the Lakes of Nicaragua, which contract was drawn up under the supervision of Mr. Squier, in accordance with the provisions of the treaty which he was engaged in negotiating with the Nicaraguan Government; and I stated that Mr. Clayton, although he approved of the general tenor of the contract, thought that some of the articles were objectionable from being of an exclusive character, particularly those which require that all directors of the company and a majority of the shareholders shall be American citizens.

Mr. Clayton now informs me that he has had a conference with the two principal directors of the company in question; and that, as he anticipated, he finds that no objection will be raised on their part so to modify the provisions of the contract as to remove from it anything of an exclusive nature.

These gentlemen, Mr. Clayton remarked, far from wishing to adopt any regulations which might have the effect of deterring British capitalists from embarking in this great undertaking, are most anxious to secure their co-operation; for the American capitalists are sensible that without such co-operation there would be but small prospect of the ultimate success of the enterprise.

I have, &c.,

JOHN F. CRAMPTON.

Viscount PALMERSTON, G. C. B.

18.—*Mr. Abbott Lawrence to Lord Palmerston.*

UNITED STATES LEGATION,
November 8, 1849.—(Received November 8.)

MY DEAR LORD: As I told you in our conversation this morning, I have been instructed by the President to inquire whether the British Government intends to occupy or colonize Nicaragua, Costa Rica, the Mosquito Coast, so called, or any part of Central America. I have also been instructed to inquire whether the British Government will unite with the United States in guaranteeing the neutrality of a ship-canal,

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railway, or other communication to be open to the world, and common to all nations. May I beg the favor of an answer to these inquiries, and to express the wish that I may receive it before two o'clock to-morrow, so as to send it out by this week's packet?

I am aware that Nicaragua is in dispute with Costa Rica, on the one hand, about her boundary, and with the Mosquitos, on the other, about their sovereignty. I have no purpose now to enter upon those questions; I only desire to know the views of Her Majesty's Government on the questions I have proposed. At the same time, I cannot but think that Great Britain and the United States can heal these breaches by kind offices; and that the Indians can be provided for in a manner satisfactory to Nicaragua and Great Britain, and far better for them than the equivocal position they now occupy.

I need not assure your lordship that the United States have no ulterior purposes in view. They frankly disclaim all intention of obtaining territory in Central America; and I have no doubt would be willing to mutually agree with Great Britain neither to settle, annex, colonize, or fortify that country.

I have, &c.,

ABBOTT LAWRENCE.

Viscount PALMERSTON, G. C. B.

19.—*Sir Henry Bulwer to Lord Palmerston.*

[Extract.]

WASHINGTON, *January 6, 1850.* (Received January 22.)

Since arriving in this country I have taken some pains to ascertain in what way the questions that have arisen between Her Majesty's Government and that of the United States, with respect to Nicaragua and the kingdom of Mosquito, might be brought to a prompt and satisfactory conclusion. Your lordship is aware that the main interest of the United States in this matter has arisen from its newly acquired possessions in the Pacific, and the project of an American company to form a water communication between the two oceans, passing through the Lake of Nicaragua and the river San Juan; this company having obtained from the state of Nicaragua the use of its lakes and territory for this purpose, and the use also of the river San Juan, to which Nicaragua lays claim.

In this manner the Government of the United States became interested in the pretension of the Nicaraguans, and desires to establish the fact that the river San Juan, ceded by the Nicaraguans to an American company for an object of the utmost interest to America, should be placed at the disposal of the state making that concession. This first interest in the claims of Nicaragua, therefore, proceeds from an interest in the construction of the canal to which I have been alluding.

But it so happens that, while it is very difficult, not to say impossible, for Her Majesty's Government to listen to those claims of Nicaragua, our decision with respect to which has been already openly taken, there is no difficulty, I believe, whatsoever in Her Majesty's Government assisting the United States Government in its general views with respect to that water communication across Central America, which Great Britain must be almost as desirous as the United States to see established. Our great object, therefore, as it has appeared to me, is to dis-

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place the discussion from the claims of Nicaragua and Mosquito, on which it is unlikely that the two Governments of Great Britain and the United States should agree, and bring it to the consideration of the canal, on which it is almost certain that their views will be identical.

Having conversed with several persons of importance, and of different parties on this subject, and with Mr. Clayton himself, I am disposed to think that the best means of doing this is by a convention between Great Britain and the United States, having for its object to facilitate the construction of the desired passage between the Atlantic and the Pacific, upon such terms as, without entering upon the question of the rival claims of Nicaragua and the Mosquitos, would confer upon American commerce all it can desire to obtain in a manner corresponding with the dignity and honor of Great Britain, and the disinterestedness of her protectorate over the Mosquito territory.

H. L. BULWER.

Viscount PALMERSTON, G. C. B.

20.—*Sir H. Bulwer to Lord Palmerston.*

[Extract.]

No. 19.] WASHINGTON, *February 3, 1850.* (Received February 18.)

I should hardly have acted, however, in any formal manner on this consideration alone, but having heard of the very serious illness of Mr. Lawrence, and been informed by Mr. Clayton that if this gentleman recover he will not be able to transact public business for a considerable time, I deemed that I stood in one of those positions in which it is necessary for a public agent to take upon himself a certain degree of responsibility for the sake of the public service; and, consequently, when Mr. Clayton, after informing me of Mr. Lawrence's severe indisposition, and explaining to me the very critical position in which he himself stood, added that he must either deliver up the whole subject to popular discussion and determination, or come to some immediate settlement upon it, I entered with him into a full consideration of the affair, and finally agreed to submit to your lordship's sanction the inclosed project of convention.

In order to make clear the spirit and intention with which the said project is drawn up, I feel it necessary to enter with your lordship into some statement of my own views with respect to the questions out of which it arises, some statement of the causes which have raised these questions into importance, and some explanation of the nature of the solution which I have given to such questions.

It seemed then to me that Her Majesty's Government, after asserting, first by argument, and finally by force, the rights of the King of Mosquito over a particular territory, and driving therefrom the agents of the feeble Government of Nicaragua, could not, at the demand of another power of greater strength, restore to the Nicaraguans that territory from which they had been ejected.

Nevertheless, I was aware that the course which Her Majesty's Government pursued in this case was with a view to the general interests of commerce as well as to those of justice; and that so far from wishing to make the protectorate which Her Majesty exercises over the Mosquito territory, or that territory itself, subservient to the views of any small, selfish, or grasping policy, it would be your lordship's desire to make

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both the one and the other useful, in the widest sense of the term, to the common advantage of mankind and the universal purposes of traffic and civilization.

Such being my conviction and knowledge on the one side, I was equally certain, on the other, that the interests of the United States were only incidentally involved in the question between Nicaragua and the Mosquitos, and mainly referred to another subject, which, though connected with the disputes which have arisen as to the extent of the Nicaraguan territory, admit of a separate adjustment.

The construction of any rail or water communication across that portion of Central America which separates, by a comparatively small distance of land, the two oceans of the Atlantic and Pacific would always have been of great interest to the United States; but since the possession of California and Oregon this interest has indefinitely increased, so that that which was once a question of convenience is now almost a matter of necessity. Thus the various routes by which a railway or canal could open a way between the two seas have, latterly, been under the constant attention of this government; and amongst the most feasible and important of the schemes indicated has been one of a canal, from the port of Realejo, through the Lakes of Nicaragua, to the mouth of the river San Juan.

Now, the state of Nicaragua made to an American company formed for the construction of such a canal, the grant, accompanied by various favors and privileges, of all such portion of the territory claimed by it, as the said company required; and, in the two treaties to which I have already referred, namely, those of Mr. Hise and Mr. Squier, the object of the American agents has evidently been to strengthen the contract which the above-mentioned company had made.

It was, however, impossible for the contemplated scheme to be executed under any grant from the state of Nicaragua as long as the mouth of the San Juan River was in the hands of another people or kingdom, protected by Great Britain; and, moreover, it was generally supposed that the Goverment of Great Britain had placed the Mosquitos in possession of Greytown, expressly in order to get hold of this entrance to the canal passage for itself, and, at all events, to prevent its falling into the possession or being subservient to the views of any other power.

On these grounds has arisen all the excitement here touching the British protectorate of Mosquito, and in this manner the United States has become interested in the dispute between the Nicaraguans and ourselves.

It is indeed most certainly true that if the American company, having the grant of which I have spoken from Nicaragua, had been disposed to carry it out in its original terms, and that if the United States Government had been prepared to accept the exact terms of the treaties made with Nicaragua by their agents it would have been impossible for Great Britain to favor an undertaking which expressly established a monopoly of trade for American citizens through the most important passage (if such a canal as that contemplated can be executed) that the commerce of the world can enjoy; and I cannot consider it unfortunate for the general interest that Her Majesty's Government should have been in a position to make its consent necessary to a work of such universal importance.

But both the American company to which I have alluded and the American Government have latterly manifested an earnest desire to have it clearly understood that they will modify all that portion of their original engagements with Nicaragua which secures any advantages to one state which another may not equally enjoy; and if such be the spirit

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which is to preside over the vast project under consideration Great Britain has not only no interest in preventing its success, but every interest in forwarding its completion and providing for its security.

In this view of the case, the protectorate which Her Majesty exercises over the Mosquitos, instead of being prejudicial to the aforesaid enterprise, may be an essential element in its favor, and all that seemed to be required in order to bring Great Britain and the United States to a perfect understanding is, that both should abandon every particular advantage, the one such as might be derived from the protectorate over the Mosquitos, and the other such as might be derived from any contract or treaty with Nicaragua; and to make the fact that they do so clear and palpable, taking as the basis of their thorough good understanding the construction of that canal which offers benefits common to the two, and dropping as a point of controversy those disputes as to the Nicaragua and Mosquito territory, on which it is next to impossible that they should come to any agreement.

It is with such views that the inclosed convention has been drawn up, its object being to exclude all question of the disputes between Nicaragua and the Mosquitos, but to settle, in fact, all that it was essential to settle with regard to those disputes as far as the ship communication between the Atlantic and the Pacific and the navigation of the River San Juan were concerned.

There are indeed stipulations which extend farther than the mere engagement, on our part, to use our best endeavors to obtain the free transit of this river, inasmuch as that we also in the said convention agree, as do the United States, not to occupy or colonize either Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America; but in consenting to these provisions, I know that I merely carry out the views and opinions of Her Majesty's Government, which have been already expressed on this subject, though in a less formal manner.

I do not pretend to say that the project of convention thus submitted to your lordship's consideration is such, either in its precise terms, arrangements, or enactments, as I should have myself proposed, or, if there had been more time for alteration and discussion, adopted. But it settles the main question immediately at issue, and also establishes a general basis for a common policy and perfect good understanding between ourselves and the United States in that portion of the world which has latterly been the scene of constant suspicions and angry rivalries on the part of our agents, and is, moreover, the record of great and noble views entertained and expressed by two great and kindred nations on one of the works most likely to commemorate our epoch, and to be of the utmost interest and importance to commerce and civilization.

For these reasons, I confess that I send it to your lordship, with the humble confidence that it will, as a whole, meet with your approval.

At all events, I know that it is an arrangement which Mr. Lawrence could hardly have made in England, and that I myself could not have made here except after much preparation and under favorable circumstances.

I may add that it will probably be attacked with violence by the parties who are for supporting Mr. Monroe's famous doctrine at all hazards, and who contend that Mr. Hise's convention is the only one that this country ought to adopt or sanction; but, on the other hand, I think I can promise that it will be duly esteemed and approved of by the Senate, and carry with it the weighty sanction of all reasonable men.

H. L. BULWER.

Viscount PALMERSTON, G. C. B.

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[Inclosure.]

Project of Convention respecting the Isthmus Canal.

The United States of America and Her Britannic Majesty being desirous of consolidating the relations of amity which so happily subsist between them, by setting forth and fixing in a Convention their views and intentions with reference to any means of communication by ship-canal which may be constructed between the Atlantic and Pacific Oceans, by the way of the River San Juan de Nicaragua, and either or both of the Lakes of Nicaragua or Managua, to any port or place on the Pacific Ocean, the President of The United States has conferred full powers on John M. Clayton, Secretary of State of The United States, and Her Britannic Majesty on the Right Hon. Sir Henry Lytton Bulwer, Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty to The United States, for the aforesaid purpose; and the said Plenipotentiaries having exchanged their full powers, which were found to be in proper form, have agreed to the following articles:

ART. I. The Governments of Great Britain and The United States hereby declare that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said ship-canal, agreeing that neither will ever erect or maintain any fortifications commanding the same, or in the vicinity thereof, or occupy or colonize either Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America; nor will Great Britain or The United States assume or exercise any dominion over the same, or take advantage of any intimacy, or use any alliance, connection, or influence that either may possess with any State or people through or by whose territory the said canal may pass, for the purpose of acquiring or holding, directly or indirectly, for the subjects or citizens of the one, any rights or advantages in regard to the commerce or navigation through the said canal, which shall not be offered on the same terms to the subjects or citizens of the other.

II. Vessels of Great Britain or The United States traversing the said canal shall, in case of war between the contracting parties, be exempted from detention or capture by either of the belligerents, and this provision shall extend to such a distance from the 2 ends of the said canal as it may hereafter be found expedient to establish.

III. In order to secure the construction of the said canal, the Contracting Parties engage that if any such canal shall be undertaken upon fair and equitable terms by any parties having the authority of the Local Government or Governments through whose territory the same may pass, then the persons employed in making the said canal, and their property used or to be used for that object, shall be protected, from the commencement of said canal to its completion, by the Governments of The United States and Great Britain from unjust detention, confiscation, seizure, or any violence whatever.

IV. The Contracting Parties will use whatever influence they respectively exercise with any State or States, or with any people possessing, or claiming to possess, any jurisdiction or right over the territory which the said canal shall traverse, or which shall be near the waters applicable thereto, in order to induce such States or people to facilitate its construction by every means in their power. And furthermore, Great Britain and The United States agree to use their good offices wherever or however it may be most expedient, in order to procure the establisment of 2 free ports, one at each end of the said canal.

V. The Contracting Parties further engage that when any such canal shall have been completed, they will protect it from interruption, seizure, or unjust confiscation, and that they will guarantee the neutrality thereof, so that the said canal may forever be open and free, and the capital invested therein secure. Nevertheless, the Governments of The United States and Great Britain, in according their protection to the construction of the canal which this Treaty specifies, and guaranteeing its neutrality and security when completed, always understand that this protection and guarantee are granted conditionally, and may be withdrawn by both Governments or either Government, if both Governments or either Government should deem that the persons or company undertaking or managing the same adopt or establish such regulations concerning the traffic thereupon as are contrary to the spirit and intention of this Convention; either by making unfair discriminations in favour of the commerce of one of the Contracting Parties over the commerce of the other, or by inflicting oppressive exactions and unreasonable tolls upon passengers, ships, or merchandise; neither party, however, shall withdraw the aforesaid protection and guarantee without first giving 6 months' notice to the other.

VI. The Contracting Parties in this Convention engage to invite every nation, state or people, with whom both or either have friendly intercourse, to enter into stipulations with them similar to those which they have entered into with each other, to the end that the whole world may share in the honour and advantage of having contributed to a work of such general interest and importance; and the Contracting Parties likewise agree that each shall enter into treaty stipulations with such of the Central

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American nations, states, or people, as they may deem advisable for the purpose of more effectually carrying out the great design of this Convention; namely, that of constructing and maintaining the proposed ship communication between the 2 oceans for the benefit of mankind, on equal terms to all, and of protecting the same; and they also agree that the good offices of either shall be employed, when requested by the other, in aiding and assisting the negotiation of such treaty stipulations.

VII. It being desirable that no time should be unnecessarily lost in commencing the great undertaking herein contemplated, the Governments of The United States and Great Britain determine to give their support and encouragement to such persons or company as may first offer to commence the same, with the necessary capital, the consent of the local authorities, and on such principles as accord with the spirit and intention of this Convention.

VIII. The Governments of The United States and Great Britain, in entering into the present Convention, have not only desired to accomplish a particular object, but also to establish a general principle; they therefore hereby agree to take under their consideration any project for a canal or railway which may be submitted to them, and which may have for its purpose to connect the Atlantic and Pacific, or to shorten and expedite the transit of persons, ships, or merchandise between the 2 great oceans: and should either of the 2 Governments deem it to be beneficial to the general interests of commerce and civilisation to extend its support, encouragement, or protection to such railway or canal, it will forthwith invite the other of the 2 Governments to be a joint party in affording such protection, support, or encouragement; and will neither request or accept from any persons, company, or state, any advantages or privileges for its own citizens or subjects with respect to such railway or canal which shall not be open for all other Governments to obtain for their citizens or subjects upon the same terms as those which are proposed to or accepted by itself.

21.—*Lord Palmerston to Sir Henry Bulwer.*

FOREIGN OFFICE, *March 8, 1850.*

SIR: I have received your dispatch of the 3d ultimo, in which you state the reasons which had induced you to enter with the American Secretary of State into a full consideration of the questions connected with the proposed plan for establishing a communication between the Atlantic and Pacific Oceans, by a ship-canal, by way of the river San Juan de Nicaragua and the lakes of Nicaragua and Managua; and you inclose the draft of a convention on this subject which has been agreed upon between you and Mr. Clayton, subject to the approval of Her Majesty's Government.

I have to acquaint you that Her Majesty's Government entirely approve of the course which you have pursued in this important affair. You are therefore authorized to sign, on the part of Her Majesty, the convention of which the draft is inclosed in your dispatch above mentioned; and in order to enable you to do so, I transmit to you a full power, which the Queen has been pleased to grant to you under the Great Seal, constituting you her plenipotentiary for this negotiation, or for any other negotiation with the United States that may arise during your mission.

I have also to instruct you to deliver to the American plenipotentiary, at the time of the signature of the convention, a note stating that you have received the express order of your government to declare, with reference to the engagement taken by my letter to Mr. Lawrence, dated the 13th of November last, a copy of which was inclosed in my dispatch to Mr. Crampton of the same date, that the British Government has no intention to make use of the protection which Great Britain affords to the people of Mosquito, for the purpose of doing, under cover of that protection, any of the things the intention to do which is disclaimed in the letter to Mr. Lawrence above referred to.

The exchange of the ratifications of the convention may be fixed to

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take place as soon as possible, either at Washington or at London, as may be deemed most convenient by you and Mr. Clayton.

After the convention shall have been signed and ratified, Her Majesty's Government will be happy to concert with the Government of the United States as to the mode and form in which the engagement contained in Article VI of the draft of convention shall be carried into effect; whether by treaties with other powers, comprising stipulations in harmony with those contained in the proposed convention between Great Britain and the United States, or by treaties of accession. If treaties of accession should be adopted, the convention should be annexed to each of such treaties, accompanied by an engagement to adopt the principles and stipulations therein recorded, so far as they may be applicable to the acceding power.

I am, &c.,

PALMERSTON.

Sir HENRY BULWER.

22.—*Decree of the director of Nicaragua of March 9, 1850, incorporating the American Atlantic and Pacific Ship-Canal Company.*

Whereas the American Atlantic and Pacific Ship-Canal Company should be legally accredited in the state for the exercise of its functions in such a manner as not to meet with any embarrassment in the development and prosecution of the enterprise, and as it is indispensable that the government of the state should grant it all the means which are in its power for this subject: Therefore, in virtue of its faculties, the government has resolved to decree, and does decree, the following act of incorporation:

First. The state of Nicaragua hereby makes, constitutes, and appoints Cornelius Vanderbilt, Joseph L. White, Nathaniel H. Wolfe, and their associates, whomsoever the same may be, now or hereafter, a body politic and corporate with perpetual succession, by the name and description of the American Atlantic and Pacific Ship-Canal Company, for the purpose of carrying into full effect the objects and purposes of the grant and charter heretofore made and given by said state to the aforesaid parties, in such manner and by such means as to them and their successors may seem proper, and not inconsistent with said grant and charter; and for such purpose the aforesaid parties and their successors are hereby invested with all necessary power and authority as a body corporate and politic.

Second. The said body corporate may, from time to time, in any manner which to them may seem proper, pass by-laws and adopt rules and regulations for the management and government of the said body corporate and its business, fix the amount of capital stock thereof, increase and regulate the subscriptions to the same, designate the number of shares and value thereof, define the mode of issuing, and issue the same, and provide for and regulate the manner of transferring the same, by themselves or their officers, and do all other acts and things which to them may seem necessary or proper, fully to execute and carry out the purposes of the said grant and charter.

Third. The said body politic and corporate may, from time to time, as it may determine, select a board of directors, and all other officers, and appoint agents and servants for the management of all the business and affairs of said company, which said board, when elected, as the said body corporate may provide, together with the president, shall be

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invested with all the powers of the said body corporate, unless by the said body the same shall be limited or defined; and the said body corporate may provide by by-laws, or otherwise, for the number of directors, the manner and time of their election, and the duration of their term of office.

Fourth. The said body corporate and politic shall adopt a common seal, and may, from time to time, alter the same, and shall have power to sue and be sued to final judgment, plead and be impleaded, complain, answer, or respond in all the judicial tribunals of this state, to the same extent as a natural person and a citizen of the state.

Fifth. The capital stock of said body corporate, and all of their property, choses in action, rights and effects, shall at all times and forever be exempt from taxation, charge, or other burden or duty whatsoever, on the part of the state.

Let it be communicated to the company by the conduct of David L. White, and to the authorities and functionaries of the state whom it may concern.

Given in Leon, the 9th day of March, in the year 1850.

NORBERTO RAMIREZ,
Supreme Director.

MR. SEBASTIAN SALINAS,
Secretary of Foreign Relations.
SEBASTIAN SALINAS.

23.—*Mr. Lawrence to Mr. Clayton.*

[Extract.].

No. 44.] UNITED STATES LEGATION,
London, April 19, 1850.

SIR: * * * There is on the eastern coast of Central America, between Cape Honduras on the north, and the San Juan River on the south (possibly extending as far even as Boca del Toro), a tract of low, swampy, unhealthy land of a various width, and rising in its western border into highlands and mountains. The lower part of this country has never been much occupied by Europeans in consequence of its insalubrity. The mountainous parts are said to contain but little valuable mineral stores. At the time of the discovery by Columbus, and until within a comparatively recent period, it was inhabited by some fifteen or sixteen tribes of Indians, speaking different languages, and often at war with each other, and, among others, there was a tribe known as the Mosquitos (so called by the early voyagers from the abundance of *moscas* found on the coast), living between Cape Honduras and Cape Gracias à Dios. They gradually overcame and almost exterminated the more southern tribes, aided, perhaps, by the buccaneers, and by degrees the name of Mosquito came to be applied to all living north of the Bluefields, and I think in all the discussions of the last century relating to the subject, the Mosquito country was never understood to extend far, if at all, below the river. It is now defined by Lord Palmerston as reaching to the San Juan River, embracing the northern bank so as to take in San Juan de Nicaragua (anglicized into Grey Town), and command the mouth of the river. In my opinion, it is quite immaterial where the royal geographers are directed to draw the line, as I am satisfied the whole claim is without just foundation. All the good maps of the sixteenth, seventeenth, and eighteenth centuries—

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French, Spanish, Dutch, and English—carry Honduras from coast to coast; Nicaragua the same, and fix the southern terminus of Mosquito shore at or near where I have indicated.

The character of the Indians at present occupying this country deserves notice, since Great Britain seeks to invest them with the attributes of an independent nation.

In the year 1836 one James Woods, a native of Ipswich, in the county of Suffolk, allured by the promises of an emigration company, set sail for Vera Pas. On his return in 1840 he published a sketch of his adventures in Central America to serve as a warning against similar companies. Among other places, he resided a while at Cape Gracios à Dios in charge of a store of provisions, rum, &c., &c. He says:

> The rum was a dangerous thing in the store, for the Indians will kill a man for the sake of a glass of rum, and there were only five Europeans on the Cape. I had a demijohn of brandy for the Indian King, but he was gone up the river. He and his brother were taken from the Mosquito shore when young and carried to the Island of Jamaica, where they were taught to read and write the English language. After staying there for several years they were brought back to the Mosquito shore. One was made king, the other a general, and although brought up in a civilized state, yet they returned to the wild and savage state in which their people live, getting drunk and giving themselves up to the most disgusting habits. No sooner had the King heard I had a demijohn of brandy for him than he set out to return home. He went to the house of a Frenchman named Bouchet, who came down to the store and told me His Majesty wished to see me. I went up to the house, where the King was lying on a bed rather unwell. I made my compliments to him, and asked how he did; he told me he was very poorly, and that he wanted me to draw him a gallon of brandy. Accordingly I went down to the store and drew him a gallon, which I carried to him. He asked me to drink, and stay and dine with him, which I did. He told me that he loved me; I replied, you love the brandy better; but I turned it off with a laugh, or he would have been offended with me. He staid for two or three days, and then left for Bluefields. These Indians far exceed all the Indians I have ever met with in lying, thieving, and everything that is disgusting. They are given up to idolatry, and lead an indolent life.

After giving details of their ignorance and barbarism, he adds: "They are also great drunkards, and are never easy but when they are drunk." And of the English settlers on the shores, he says, they "are almost as bad as the natives, and live in almost as disgusting a manner." This strong picture, painted by an Englishman, is borne out by the personal relations of many other travelers.

The historical portion of this paper will relate not to Mosquito alone, but to Central America, from Tehuantepec to Panama. The naval and military operations of the Spaniards were so extensive, their conquests were so complete, and their settlements were so rapid and numerous, that it is impossible to separate the conquest and colonization of that part of Nicaragua and Honduras called the Mosquito coast from the subjugation and settlement of that portion of them to the west of the indefinite line swaying across their interior at the will of the foreign office.

* * * * * * *

I am left, therefore, in this connection, only to show that Spain *discovered* Central America and *occupied* it. I believe that she did much more: that she discovered, circumvallated, explored, conquered, settled, retained possession of, and governed it, with only such interference as the rudeness of the times permitted, or rather could not prevent.

The principal authorities for the early history of Central America are Oviedo, Peter Martyr, Gomara, Encisco, Cortes, Las Casas, Herrera, Torquemada, Remesal, Cogulludo, Wytfleit, De Saet, Ogilby, Villagutierre, Sanson, Moll, Jefferys, Navaretto, Juarros, Linschot, Boterro, Hakluyt, Purchas, Alcedo, &c., &c. I have caused all these to be carefully

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examined and compared with many other writers, Spanish, English, Dutch, and French. The following facts are derived chiefly from the above sources:

Columbus in his fourth voyage first made land on the North American continent at Cape Honduras, near the present town of Truxillo, on the 17th of August, 1502, and thence proceeding easterly, shortly afterwards entered the mouth of Black River, and in accordance with his instructions landed and took formal possession of the country, in the presence of the unresisting natives, in the name of the crown of Castile. In the early Spanish maps this river is called the Rio del Possession, a name given to it by Columbus himself in commemoration of this event. He next touched and took possession at Cape Gracios à Dios, where he remained a short time, holding friendly intercourse with the natives, whom he described more favorably than he did their country. Thence he coasted leisurely southward toward Veragua, communicating often with the inhabitants, and touching particularly at the Bluefields River, and at the mouth of the San Juan.

The results of this voyage being known in Spain, expeditions were fitted out at different times under various commanders, which reconnoitered thoroughly the entire coast from Darien to the Bay of Honduras, penetrating even to the extremity of Gulf of Dolce, and thence along the coast of Yucatan. Much intercourse was held with the natives, and every river and bay was penetrated to find the supposed strait to the land beyond the Ganges, for this country was then believed to be an island, or part of India, and the Spaniards were not fully disabused of the idea until the discovery of the Pacific by Balboa in 1512. After this event expeditions sailed from year to year along both the Atlantic and Pacific coasts, with the double purpose of discoving the supposed passage connecting the two oceans, and of exploring, conquering, and settling the country, and so rapidly were the latter objects accomplished that by the year 1530, not only the Pacific coast from Panama to the Gulf of Fonsecas had been reconnoitered, but the interior from Tehuantepec to Veragua had been crossed and recrossed; many tribes of Indians had been subjected, and towns had been built under the commands of the two d'Avilas Olid, Francis de Las Casas, Cortes, Alvarado, Gringalsa, Cordova, Roxis, Montejo, &c. From the nature of the country, as I have already described it, the principal settlements were made near the Pacific coast, but the Spaniards did not neglect to consummate their title on the eastern shore, Truxillo, Omoa, and other towns on the bay of Honduras were founded in 1524. Roxis attempted a settlement at Cape Gracios à Dios in 1530, which he found impracticable from the nature of the country. Merida was founded in 1542; Valladolid in 1526, and rebuilt in 1543; Campeche in 1540, and in the interior many towns were built (as Olancho, Comajagua, Segovia, &c. Before 1530 the greater proportion of the very numerous tribes of Indians were subjected to the Spanish authorities either by the military or the ecclesiastical power, for, after the coming of Las Casas, the missionaries did nearly as much as the soldiers in controlling the aborigines. Nicaragua and Honduras are reported to have been most densely populated at the time of the discovery; but scarcely half a century had elapsed before nearly nine-tenth of the natives had faded away before their bloody conquerors. As early as 1524, Cortes wrote to the Emperor Charles V that only two of the many tribes of Honduras remained unconquered. Shortly after these yielded to the power of Alvarado. Some fled to the mountains, and the country now known as Mosquito, where they remained unmolested, protected by their own weakness, and by the want of mineral wealth in the soil on which

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they had taken refuge. They were shielded too by a still stronger arm. Spain, ever jealous of the interference of other European powers in her traffic, left the region unsettled to be a barrier between the Atlantic and the golden regions of the West. But though she neglected to cultivate she never neglected to protect and defend. Guarda costa were early established, to protect the coast, and watch over the argosies, as they set sail for the old world.

The natives of Mosquito were thenceforward constantly under the influence of both the Franciscan and Dominican orders of missionaries. From 1575 to a very late period, Spanish missionaries have almost always resided, by order of the government, among the numerous tribes of Mosquito. Sometimes as many as twenty at a time were there exerting a great influence in softening the barbarity of those savage tribes. It is true that many of them were subjected to the most revolting cruelties, and suffered death itself, yet in almost every instance these were caused by the hostilities and treacheries of these warlike tribes among themselves, and not, as the English writers assert, by their hatred of the Spanish yoke. The missionary was destroyed, not by the tribes with which he lived, but by its enemies. Fortunately the histories of the Franciscan and Dominican orders give ample details of these extraordinary missions.

I think I have now established all I promised with reference to the discovery, conquest, and settlement of this country by Spain. It is not to be conceded, however, that the exaggerated accounts of her wealth and the value of her commerce soon attracted hostile parties to these shores, who in process of time increased in power, and became the foundation for claims adverse to her territorial rights on the Mosquito coast. This brings me to a notice of the buccaneers, or pirates of the West Indies.

The early buccaneers were composed of English, French, Dutch, and Portuguese adventurers. The private enterprises of Drake and his cotemporaries are well known. Like all other buccaneer adventurers for half a century later, they were directed against the Spaniards, only because Spain was the wealthiest and most commercial nation, and therefore the best object of plunder. During time of war (and it should be borne in mind that Spain was almost constantly at war with some European power) these pirates managed to get from unscrupulous governments letters of reprisal, and sometimes sailed under English, sometimes under French, sometimes under Dutch, and sometimes under Portuguese commissions, as the case might be. Spain treated them all alike as pirates. England, in those days, so far from availing herself of their acts, disclaimed them. The Spanish ambassador at London repeatedly remonstrated against their depredations, and was always met with a disavowal. By the time of Cromwell they had become very numerous. Spain increased her guarda costa, and sought to protect herself by destroying them, but this only served to unite all shades and nations together under a kind of piratical republic of the sea. Meanwhile England, France, and Holland had each gained a footing in the West Indies. The pirates had grown so numerous that no power was exempted from their depredations. England felt their influence and was about negotiating with Spain for their overthrow, when the difficulties between Charles and his Parliament interfered to prevent. When the negotiations were renewed with Cromwell he put off the conclusion of a treaty till he could secure some conquest in the West Indies, and dispatched secretly an expedition against Cuba, which, failing in its object, won Jamaica in 1655 to English dominion. Then England of-

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fered to negotiate, and define the respective rights of England and Spain, but the latter refused. Immediately after the conquest of Jamaica the governors of that island turned their attention to the pirates; and, finding their reduction too difficult a work, sought to take advantage by regulation of what they could not destroy by force. The stringent measures they took induced many to abandon their dangerous avocation, and retire to the Indians of Yucatan, Honduras, and Nicaragua, with whom they had been in intercourse for many years, and hence the great increase of the English trade in logwood, and subsequently in mahogany. The Mosquito Indians about Cape Gracias á Dios had been repeatedly stimulated by the Dutch, French, and English adventurers during the several wars against Spain, to join in the expeditions against the Spanish settlements, and indeed were on such friendly terms with all that each claims the priority of intimacy with them. The earliest attempt of the English to tamper with them was under Sir Thomas Modyford, governor of Jamaica, about 1677. His proceedings were not approved, and in 1670 he was arrested and sent to England. The illicit trade in logwood and other things from Campeche to the Bay of Honduras and the Mosquito country had become so offensive to Spain, who feared that it might cover a permanent occupation, that she was induced to enter into the treaty of 1670, which yields to England the islands she had conquered in the West Indies, defined for the first time the respective rights of the parties, and has been made the basis of all subsequent treaties. This brings me to the second position of the British Government.

By the seventh article of the treaty of Madrid "it is agreed that the most serene King of Great Britain, his heirs and successors, shall have, hold, keep, and enjoy forever, with plenary right of sovereignty, dominion, possession, and propriety, all those lands, regions, islands, colonies, and places whatsoever being or situated in the West Indies, or any part of America, which the said King of Great Britain, or his subjects, do at present hold and possess." It is plainly of great importance to the present inquiry to determine what lands, regions, islands, colonies, or places King Charles, or his subjects, held or possessed in America on the conclusion of that treaty.

Now it is evident that this article was inserted in the treaty to determine a previous conflict of claims to sovereignty, by the fact of existing possession, and that where the claims of the parties had not come in conflict, it had no validity. Leaving out of view all the American continent to the north or south of Central America and the Indies, it is well known that the title to Jamaica was in dispute, and that this article was expressly inserted to settle it by confirming England's occupation. Had it any reference beyond that to Mosquito? After the preceding review I think I am warranted in saying it had not, because, in the first place, I am unable to find that the sovereignty had ever been in dispute; and because, in the second place, the only possession approaching a hostility to Spanish right was that of the buccaneers, composed of all nations, which was not continuous, which was piratical, and therefore clearly illegal, which was disavowed by England, and therefore cannot inure to her, and which was made in admission of Spain's title, since it was a war upon Spain.

And further, Great Britain does not now claim ever to have held or possessed Mosquito. To adopt a little of Lord Palmerston's severity of criticism on the language of treaties, I say that the terms "hold" and "possess" have definite meanings in international law, that they imply title, either temporary, as in the case of a violent occupation in time of

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war, or permanent, to which occupation is not a necessary incident. The claim under which Great Britain shelters the illegal occupation of Mosquito by the English is not set up in itself, but in a monarch of its creation, who is alleged to reign under its protection.

The political relation of protector and protected is not a new one. It grows out of contract. It implies sovereignty in each party, for when the sovereignty of the lesser merges in that of the greater, the peculiar relation ceases. Any occupation, therefore, by the English, at any time must have been (by their own showing) as under Mosquito. Any possession must have been the possession of Mosquito. And when that possession is demonstrated to be, not adverse to, but under Spain, their title, being that of a privy in estate, must take the same course.

Any light in which we view the claim presents a tissue of inconsistencies. To defeat the Spanish title it is alleged that the Indians are an independent nation, whom Spain could never conquer; while, on the other hand, to let in Great Britain to the benefit of such a defeat, it is said that her protection is necessary to enable them to protect themselves against the Spaniard. Either they are an independent nation of themselves, capable of existing without this protection, and therefore not entitled to it, or the aid has been rendered in bad faith to maintain a tribe of savages in revolt against their sovereign.

The contemporaneous construction of the treaty of Madrid shows that the right of Spain to the whole of Central America was not questioned. Sir William Godolphin, the ambassador to Spain, who negotiated and signed the treaty on the part of Great Britain on the $\frac{19}{29}$ May, 1672, wrote to Lord Arlington from Madrid as follows:

Your Lordship hath required my opinion touching the cutting of logwood in the West Indies by some English on pretence that the Parts where they take the same are not Inhabited or Possessed by the Spaniards. * * * * In answer, * * * the said wood is brought from Yucatan a large Province of New Spain, extending into the North Sea like to a Peninsula ab't a hundred leagues in length, sufficiently Peopled in respect of other places of those Indies having several good Towns as Merida Valladolid, San Francisco de Campeche &c., the Govern't thereof being likewise esteemed one of the most considerable there next to the two Vice Royaltyes of Peru and Mexico. * * * * Now this wood growing on the northern coast of Yucatan * * * * is commonly called here Campeche wood. * * * This premised we may reasonably conclude the Crowne of Spayne to have as well too much right as advantage in these woods, not to assert the Propriety of them, for though perhaps they are not all inhabited (which is not to be admired) or distinguished into particular Tenements, but remaine in common, yet they are in generall possessed by these People who may as justly pretend to make use of our Rivers Mountains, and other commons, for not being inhabited or owned by individual Proprietors, as we can to enjoy any benefit of those woods.

And this is the sense of all the Spaniards, who esteeme themselves in full possession of every part of that Province, notwithstanding that it containeth much Territory unpeopled, since (as I have said) to inhabit and possess are distinct, neither is the former essentiall to the latter.

* * * * * * *

Lastly what will render the pretension to a freedome of cutting this wood more odious to the Spaniards is, that in consequence thereof, and for the same reason wee may inferre a liberty to inhabit there, opening a doore to any farther attempt wee may designe against theere continent.

* * * * * * *

This much to the merritts of the cause, & the point of strict justice.

But now, after all this, I will adventure to give my opinion, that if the English in the cutting wood at Campeche would restrain themselves to that alone, observing to doe it in parts neerest to the sea, more remote from their Towns * * * and without making inroads or other depredations on the Country, it may be adviseable for his Maj'y, though not to authorize yet to connive * * * sure for when they [the Spaniards] see the American Treaty in other points punctually complyed with and no other spoyle committed than the bare cutting of that wood * * * they may be induced to connive likewise.

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When it is remembered that up to this time all geographies conceded, or rather never doubted, the right of Spain to the whole of this part of the continent, that that right had been intruded on only by the buccaneers, and that these intrusions had been confined to Yucatan and its neighborhood, and had not yet extended as far south as Mosquito, which was a part of New Spain, of which "the Spaniards then esteemed themselves in full possession of every part," the completeness of the testimony will be understood and its almost prophetic nature appreciated. And I am prepared to show, in addition, that the connivance of the governors of Jamaica in such cutting and encroachment was encouraged and approved in London.

I shall now assume it to be clearly proved that in 1670, while the English had no right, either directly or indirectly, in Mosquito, Spain held undoubted sovereignty over it, and shall travel forward to the year 1739, when hostilities commenced between Great Britain and Spain, during which a permanent occupation of this country by the former power was for the first time attempted. Most of the acts of occupation or protection (for they sometimes take the one form and sometimes the other) on the part of England took place between this date and the peace of Paris in 1763, and were either done during a time of hostilities or were themselves causes of a subsequent war. It is plain, therefore, that, being aggressive, they cannot now be used by Great Britain to set up the alleged title in the Indians.

On the 19th of October, 1739, war was declared against Spain, ostensibly because she had neglected to pay the paltry balance of £95,000 according to treaty; but the real object of the British colonists appears to have been to gain a stronger footing in the West Indies before concluding a peace. On the 17th of August, 1740, Sir William Pultney, of the Admiralty, wrote to Admiral Vernon, then in the West Indies, a long letter, detailing the plans of the Government. He says:

> To ravage the coast of Spain (supposing we could do it) seems to be with a desire only of forcing the Spaniards into a peace before we have secured such advantage as we may reasonably hope for in another place. Every man of sense agrees that the only place to push them in is the West Indies, and there we can be too hard for them, and may defy the whole world besides. * * * We [England] one and all cry out there is no dependence on the faith of treaties. Something must be done to keep the Spaniards from insulting us again, and we must no longer rely on bare promises only for the security of our navigation and commerce. Take and hold, is the cry. This plainly points to Cuba. * * * It [the taking of Carthagena] might be a very sensible mischief to Spain, but what we now immediately want is advantage to ourselves. * * * When we are once possessed of it [Cuba] the whole world will not be able to dispossess us again. We may then make peace with Spain without the intervention of France, giving them almost anything in Europe they may desire, but showing them at the same time they shall in great measure depend upon us, the chief maritime power, and convincing them of the truth of their own old proverb: *Peace with England and war with the whole world.*

During the years 1739 and 1740 many projects were framed for the purpose of gaining the desired footing in the West Indies, for the accounts of the wonderful details of which we are indebted to the principal actors in them, many of whose most confidential letters, owing to private quarrels, have been published. In addition to these, I have been permitted to examine the original Vernon and Wager manuscripts, a collection embodying in the original official as well as private letters of, the Duke of Newcastle, of Sir Charles Wager, of Admiral Vernon, of Sir William Pulteney, of Governor Trelawney, of Mr. Robert Hodgson, and of many others, a mass of authentic information never published, and not existing anywhere else, unless in her Majesty's state-paper office. I am happy to say that this collection will probably go to America, as it is now owned by an American gentleman.

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As soon as hostilities were determined upon, the Duke of Newcastle (on the 15th of June, 1739) directed Governor Trelawney to be on his guard against any attempt of the Spaniards against Jamaica, and gave him full power and liberty to annoy the enemy. He directed him also to encourage the taking out of letters of marque and reprisal against the Spaniards, and to authorize descents upon the Spanish settlements.

On the receipt of these orders, Governor Trelawney at once revived the old scheme of the Mosquito Indians, and on the 20th January, 1739–'40, wrote to the Duke of Newcastle, advising a settlement upon the Mosquito shore. About one hundred Englishmen, he said, were there, "mostly such as could live nowhere else." He proposed to bring all the English in that quarter together in one settlement, so that by the help of the Mosquito Indians, whom he calls his "friends," they might induce the neighboring Indians to revolt, and thus by supporting the Indians "a little, spread the revolt from one part to another till it should be general over the Indies, and drive the Spaniards entirely out or cut them off." Accordingly, early in 1740 he commenced his Quixotic scheme by sending one Robert Hodgson to the Mosquito shore, fully equipped with everything necessary to enable him to tamper with the Indians and excite them against the Spaniards. I am fortunately able to give from the Vernon manuscripts Mr. Hodgson's own account of what he did under this extraordinary commission:

SANDY BAY, *April 8, 1740.*

May it please your excellency: * * *

King Edward, being informed of my arrival, sent me word that he would see me the next day, which he did, attended by several of his captains. I read to him your excellency's letter and my own commission, and when I had explained them by an interpreter, told my errand, and recommended to them to seek all opportunities of cultivating friendship and union with the neighboring Indian nations, and especially such as were under subjection to the Spaniards, and of helping them to recover their freedom. They approved everything I said, and appointed the 16th to meet the governor, John Briton, and his captains at the same place, to hear what I had further to say.

On the 16th they all came, except Admiral Dilly and Colonel Morgan, who were sick. General Hobby and his captains were at too great a distance to be sent for, but, their presence not being material, I proceeded to acquaint them that, as they had long acknowledged themselves subjects of Great Britain, the governor of Jamaica had sent me to take possession of their country in his majesty's name; then asked if they had anything to object. They answered they had nothing to say against it, but were very glad I was come for that purpose; so I immediately set up the standard, and, reducing the sum of what I had said into articles, I asked them both jointly and separately if they approved and would abide by them. They unanimously declared they would; so I had them read over again in a solemn manner under the colors, at the end of every article fired a gun, and concluded with cutting up a turf, and promising to defend their country and to procure them all the assistance and instruction from England in my power.

The formality all this was done with seemed to have a good influence upon them, for they often repeated their desire of learning to read, and said they must now mind their kings more than they had done, and do all they could to help themselves and hurt the Spaniards, to whom I recommended all the mercy that was consistent with their own safety; but they seemed not to understand me rightly, saying if they fight they must kill. The articles I inclose, and hope your excellency will excuse so much ceremony, for, as I had no certain information whether the country was ever taken possession of before or ever claimed otherwise than by sending them down commissions, I thought the more voluntary and clear the cession of it was the better. The governor came attended with a numerous guard, who behaved to him with much respect and *silence*. He is a sensible old man, and carries a good command. The king being very young, I believe not twenty, is not much observed, but was he to be a while in Jamaica or England 'tis thought he would make a hopeful monarch enough.

* * * * * * *

The same day Admiral Dilly and Colonel Morgan sent me word they were coming to wait on me. I immediately crossed the lagune to meet them, hearing they were sensible, clever fellows, and such I found them. They had dispatched a messenger to the governor to meet them the next day, to hold a general and decisive council.

They all met on Sunday, the 23d, at Senock Dawkra (Mr. Whitehead's house). The

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governor, being sick, tried our patience by making us wait till the afternoon, but when he came made ample amends by the justness of his sentiments.

He told the king and his captains it was plain they had got a name and the good opinion of the governor of Jamaica (whose success against the rebellious negroes they had all heard of), and if they did not keep it up what would the world say of them? There was an officer now sent down by your excellency to observe their manner of fighting, and if they did not do their best they should lose the favor of the English. It was true they were but a small number of people, compared to us, who had men to spare for sickness and the sword, but if they showed themselves worthy, no doubt the King of Britain would send a force sufficient to get them all they wanted, besides teachers to instruct them in what is right and good. He said General Hobby had often talked about taking towns in time of peace, and called the English cowards. Now it was war they must show they were not such themselves; that the English were the best judges when war or peace was proper; and none of them had any business to act otherwise than they were directed by the governor of Jamaica. * * * * I find my council about sobriety has had some weight with the old men, but the young ones are got together there since with the women into drinking-bouts. They intoxicate themselves with a liquor made of honey, pine-apples, and cassada, and if they avoid quarrels, which often happen, they are sure to have fine promiscuous doings among the girls. The old women, I am told, have the liberty of chewing the cassada before 'tis put in, that they may have a chance in the general rape as well as the young ones.

I fell into one of them by mere accident last Monday, where I found Admiral Dilly and Colonel Morgan retailing my advice among them, to little effect, for most of them were too drunk to mind it, and so hideously painted that I quickly left them to avoid being daubed all over, which is the compliment they usually pay their visitors on those occasions.

Those two captains complain much of their drinking, but say it has been taught them by the English; others say not, for how should the English invent the pine and cassada drink? Their resentment of adultery has lost its edge, too, more than among other Indians; that, I make no doubt, they are obliged to us for. Their breach of promises to their bargains I take to be a good deal owing to a sense of being defrauded by traders, but through their ignorance of numbers and value, not being able to tell how, they are apt to make improper reprisals. As for their laziness, the grand promoter of the rest, I really think it must have been owing to their discontent at the usage they have received from privateers and others, because I don't find it has been epidemical amongst them till lately.

* * * * * * *

I have disposed of several presents, but their returns being chiefly in visits to get more or to drink punch, I have stopped my hand. The Lubeck duck osnaburgs, powder, ball, flints, and shot I shall divide among them at setting out, with a promise that they shall pay me according to their behavior or their plunder. * * *

ROBT. HODGSON.

APRIL 12, 1740.

P. S.—Had I been better informed, I might have made a little fortune out of your excellency's money and done more justice to the cause, for the Mosquito men have not got half guns enough, so must be supplied by Stewart and the other white men that go with us, who, no doubt, will make them pay sound.

* * * * * * *

The origin, character, history, and results of the British intrigues in this quarter are all disclosed in this letter. They originated in public and private cupidity, in the desire of territorial aggrandizement, and of personal gain to the governor of Jamaica. They were pursued in the same spirit by the distribution of intoxicating liquors and missiles of destruction among the savages, and by exciting them to an unnatural war against the Spaniards. They resulted in the complete degradation of the Indians themselves, a degradation which they have never been able to shake off. Yet this is the "protection" Great Britain sets up and seeks to perpetuate.

Mr. Hodgson skillfully aroused the old resentment of the Indians against the Spaniards, and induced them to join him in an expedition which proved a failure. He, however, remained among them, and was instructed by Governor Trelawney "to endeavor to persuade the Indians to form themselves into some sort of a government."

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Meanwhile the home government had the scheme under consideration, and approved of it. But Sir Charles Wager had fallen in with another adventurer, named Lee, and wrote to Admiral Vernon from the admiralty office as follows, under date May 23, 1741:

I sent Governor *Trelawney*, by the last ships, some accounts I had from one Captain Lee, who was some time a factor to the South Sea Company, at *Guatimalla*, of the particular situation, riches, and trade of that part of the continent, which is much more than I imagined. The governor's *Don Quixotte*, Mr. Hodgson, seemed to want this Captain Lee with him, and I could have seen him had it not been for some difficulties, but I had his scheme in writing, and sent it to *Plymouth*, but the ships were gone before it came there.

Again, on the 18th of August following, he wrote to the admiral thus:

I sent you by the last ships a scheme of Captain Lee for a proper number of soldiers, when they can be spared or can do nothing more considerable, to go down to the Mosquitos, and, with or without them, to make attempt on the Spaniards up the river Dulce, where Captain Lee seems perfectly acquainted; but as we have made him captain of the *Bonetta* sloop, purely for the sake of this scheme only, I refer you to him for a clear explication of the whole scheme, which in its consequences may be much more considerable than it appears at first sight, for if we can procure a sufficient number of arms for the *Indians*, who are able and willing, as he says, to pay for them, though that is not material, they would soon make themselves their own masters, and drive all the *Spaniards* out of the country, or change conditions with them and make them the hewers of wood and drawers of water; and this I think they may do, if supplied with arms and all things necessary, *more easily than the Spaniards conquered them* [the italics are mine except the word Spaniards], for if once there was a considerable insurrection of the *Indians* about *Guatimalla* and that country, in which the *Mosquito* men may perhaps be persuaded to join with them, there would soon be an insurrection both in *Merico* and *Peru*, of which the *Spanish* court has been very much afraid, especially in *Peru* and *Chili*, where it is not improbable but the *Creole Spaniards* would soon join with them and set up a king of their own.

Again on the 20th of the same month, and still again on the 7th of October following, he wrote to Admiral Vernon, reiterating these views in almost the same language. These letters, as well as that of Mr. Hodgson, expose the manner and the object of the British tampering with the Indians.

In 1743 these "schemes" had so far progressed that Governor Trelawney recommended that a company of troops should be kept at the Mosquito shore, and that some sort of government should be established there, and the governor encouraged emigration there, and tried to get permission from the government to grant lands, and thus induce settlement. But the board of trade did not approve of this.

On the 19th of July, 1744, notwithstanding the discouraging report of the board of trade as to the rights of Spain, an order passed the council detaching a certain number of troops from Jamaica for the Mosquito shore, and providing for the erection of forts and the establishment of a government. In February, 1748, there was another order in council for sending a supply of ordnance to the new settlement on the Mosquito shore to the amount of £1,528 13*s.* 7*d.*

The fort at Black River was completed in 1747, so that Governor Trelawney was confident that should the Spaniards make a descent upon Mosquito shore, as was expected in the summer of 1748, it "would be able not only to defend itself, but to annoy the enemy."

During all this time (*i. e.*, from 1739 to the peace of Aix la Chapelle) I do not learn that the Spaniards made any direct attempt to dislodge the English from the Mosquito shore, except by an expedition from Nicaragua in 1747, which was a failure. The reason was they were busily engaged in more important places.

Matters were not changed by this peace. The English gained no new rights. They, nevertheless, determined to maintain their settle-

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ment, and in October, 1749, the king appointed Captain Hodgson "to regulate and superintend the settlement on the Mosquito shore, which has been subsisting several years under the protection of our friends and allies, the Mosquito Indians." Captain Hodgson was to put himself under the direction of the governor of Jamaica, and to correspond with him. One cannot but admire the facility with which the relation of the Indians shifts from protector to protected to suit the exigencies of the case.

In 1750 and 1751 the Spanish authorities remonstrated against these proceedings, asserted their rights, and threatened an expulsion of the English. Governor Trelawney, alarmed at the aspect of affairs, sent Hodgson an artful set of instructions for his conduct towards the Indians, which were to be shown to the President of Guatemala, to cause him to believe that the object of the English in keeping a superintendent among the Indians was to restrain them in their hostilities against the Spaniards; but upon their being presented to him he protested against the English interference, and proposed sending a Spanish agent or governor among the Indians. In reply, Hodgson wrote to him on the 3d of December, 1750, that he was already there as a superintendent, appointed by the governor of Jamaica to protect the Spaniards, as they could not protect themselves, and asserted that the Indians were free, never having been conquered by Spain.

In 1757 an attack by the Spaniards was apprehended at the shore, but only a missionary was sent among the Indians, named Juan Joseph Solis de Meranda, who reported that hostilities would not be commenced if he were allowed to remain among the Indians. This was at first granted; but the English, soon perceiving the influence he was gaining over the natives, to their great prejudice, arrested him under the pretense of his being an impostor, and sent him to Jamaica.

It now came to the knowledge of the governor of Jamaica that the Spaniards were making preparations for invading the Mosquito shore and driving the English from it. The settlers became alarmed and demanded that the detachment of soldiers should be withdrawn. The governor, on his part, proposed that the fort should be demolished rather than give umbrage to the Spaniards.

In 1752 Governor Knowles succeeded Governor Trelawney. He took a different view of the rights of the Mosquito Indians, restored Father Solis, and seemed determined to expose these transactions. He entered into a correspondence with the governor of Guatemala, and proposed a cessation of hostilities till he could hear from England. On the 26th of March, 1753, he wrote to the secretary of state that the settlement on Mosquito shore was "a job"; that if Captain Hodgson was not checked or recalled he "would involve the nation in difficulties"; that the Indians were so perplexed they "did not know which part to take"; and that he should advise withdrawing the troops unless the ministry intended to maintain the right to the territories, which he thought was not worth contending about.

During Governor Knowles's administration the condition of things improved, but he was not allowed to remain long. On his departure they fell back into the old channel, the English covertly acting the part of aggressors, the Spaniards resisting by protest and by force, until the treaty of Paris in 1673; except that in 1759 the Indians took up arms against the English, being discontented with their treatment of them and disgusted with the course of Captain Hodgson, and except also that this latter year was signalized by a communication from the board of trade ignoring the existence of any British settlement on the Mos-

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quito shore, and declining, therefore, to entertain complaints against officers of the crown for acts done there.

The treaty of Paris assumes to define the respective rights of the parties in Central America. By Article XVII it is provided that "His Britannic Majesty shall cause to be demolished all fortifications which his subjects shall have erected in the Bay of Honduras, *and other places of the territory of Spain in that part of the world*, &c., and then the right is given to the English to cut logwood on the "Spanish coasts and territories." In accordance with this provision, all the British fortifications in Mosquito were demolished and the troops removed. But the settlers remained both there and in Honduras for the purpose of cutting and carrying away logwood, and marked their residence by repeated aggressions, similar to those already described, which I can give you in detail if you desire it. In 1783, at the close of the contests which accompanied the American Revolution, it was found necessary to define more particularly the rights of the English cutters, which is accordingly done by the sixth article of the treaty of Versailles, where it is provided that, "the intention of the two high contracting parties being to prevent as much as possible all the causes of complaint and misunderstanding heretofore occasioned by the cutting of wood for dyeing, or logwood, and several English settlements having been formed and extended under that pretense upon the Spanish continent, it is expressly agreed that His Britannic Majesty's subjects shall have the right of cutting," &c. (defining the limits about the Belize within which the right might be exercised), "and His Catholic Majesty assures to them the enjoyment of all that is expressed within the present article, *provided that these stipulations shall not be considered as derogating in any wise from his rights of sovereignty.*" And then it was provided that within eighteen months from the ratification the English should wholly retire from the Spanish continent and islands to the space allotted to them. This the English were understood at the time to have received as a compensation for abandoning Mosquito.

It is now claimed by Great Britain that before the conclusion of this treaty Mosquito had become an independent nation, and therefore was not embraced within its provisions. The argument upon which this is founded involves the consideration of the English title.

Starting from the position that the Indians had never been conquered, and therefore were not within Spanish jurisdiction (the fallacy of which I have already shown), all English writers rely on three, and only three, circumstances to establish the Mosquito protectorate, all of which are stated by Lord Palmerston in his note to Mr. Castellon of July 16, 1849: 1st. A submission by the Mosquito King to the governor of Jamaica on behalf of the King of England in 1687, founded on an alleged prior submission between 1645 and 1660. 2d. A convention between the governor of Jamaica and the King of the Mosquitos, concluded June 25, 1720. 3d. Certain reports and resolutions made in 1774 in the house of assembly of Jamaica.

To all this I might reply that the Mosquitos could not of themselves change their political connection; that, not being an independent nation, all acts done by them as such are void; that the demolition of fortifications shows England's construction of the treaty of Paris; and that the treaty of Versailles uses the broad language of the "*Spanish continent*," and affirms Spanish sovereignty. Without dwelling on these apparent considerations, I turn to the authorities relied upon for these positions.

And as to the first, I find that all writers refer for proof to an account of the matter given by Sir Hans Sloane, who was in Jamaica at the time

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of the alleged submission to the Duke of Albemarle, the governor, and was his family physician, and of course in a position to know all about it. The authority most often cited is a memoir by Bryan Edwards, entitled "Some account of the British Settlements on the Mosquito Shore, drawn up for the use of Government in 1773." The history of this memoir is a little curious. It purports to have been drawn up for the use of government in 1773. It was printed anonymously, and was in 1776 "laid before Parliament" with the case of the Morning Star, to which I shall soon allude. The treaties of 1783 and 1786 having been concluded, the subject dropped. Twenty years afterwards, Mr. Edwards published his "History of the West Indies," in one of the foot-notes to which he states that *the settlement in Mosquito having been surrendered to Spain by the treaty of 1786*, it did not come within the plan of his work to treat of them, but referred all curious on this subject to this memorial. In 1819, in the fifth edition of his history (the first published after his death), this memorial was for the first time printed with the history, and under his name. It is now reproduced by the Foreign Office in the "correspondence," &c., on this subject, submitted to Parliament in 1848. That you may see how history has been perverted, I give you in parallel columns what Sir Hans Sloane really did say (copied from his printed history) and what Mr. Edwards represents him as saying:

SIR HANS SLOANE.	MR. EDWARDS.
One King Jeremy came from the *Mosquitos* (an *Indian* People near the Provinces of *Nicaragua, Honduras,* and *Costa Rica*). He pretended to be a king there, and came from the others of his country, to beg of the Duke of *Albemarle,* governor of Jamaica, his *Protection,* and that he would send a Governor thither with a power to war on the *Spaniards* and Pirats. This he alleged to be due to his country from the Crown of *England,* who had in the reign of King *Charles* I submitted itself to him. The Duke of *Albemarle* did nothing in this matter, being afraid it might be a trick of some people to set up a Government for Bucaniers or Pirats. This *King Jeremy,* in coming to Town, asking many questions about the Island, and not receiving as he thought, a satisfactory account, he pulled off his *European* cloaths his friends had put on, and climb'd to the top of a tree to take a view of the country.	
The memorial and substance of what he, and the people with him, represented to the Duke of *Albemarle,* was, That in the reign of King *Charles* I of ever Blessed memory, the Earl of Warwick (by virtue of letters of reprisal granted by his said majesty for damages received from the Subjects of his Catholic majesty) did possess himself of several islands in the West *Indies,* particulary that of *Providence* (since called by the *Spaniards St. Catalina*) which is situate in 13 deg. 10 m. N. Lat., lying East from *Cape Gratios de Dios* (vulgarly known by the name of the *Muskitos*) between Thirty and Forty leagues: which put the said Earl upon trying all ways and means of future correspondence with the natives of the said Cape, and neigh-	The memorial and substance [says Sir Hans] of what he (the Mosquito King) and the people with him represented to the Duke of Albemarle was that in the reign of Charles I. the Earl of Warwick, by virtue of letters of reprisal, possessed himself of several islands in the West Indies, particularly that of Providence (since called by the Spaniards St. Catalina), which is situated 13° 10 m. N. lat., lying east from Cape Gracios a Dios (vulgarly known by the name of the Mosquitos) between thirty and forty leagues, which put the said Earl upon all ways and means of future correspondence with the natives of the said cape and neighboring country: and in some little time he was so successful as to gain that point,

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boring country, and in some little time was so successful as to gain that Point, and further prevailed with them so far, as to persuade them to send home the King's son, leaving one of his People as Hostage for him, which was Col. Morris, now living at New York. The *Indian* Prince going home with the said Earl, staid in *England* three years, in which time the *Indian King* died, and the said natives having in that time had intercourse of Friendship and Commerce with those of *Providence* were soon made sensible of the grandeur of his Majesty of *Great Britain* and how necessary his Protection was to them. Upon the return of the said *Indian* Prince, they persuaded him to resign up his authority and power over them, and (with them) unanimously declare themselves the subjects of his said Majesty of Great Britain, in which opinion they have ever since persisted, and do own no other Supreme command over them.

and prevailed with them so far as to persuade them to send home the King's son, leaving one of his people as a hostage for him, which was Col. Morris, now living in New York. The Indian prince, going home with the said Earl, staid in England three years, in which time the Indian king died, and the natives, having in that time intercourse and commerce with those of Providence, were soon made sensible of the grandeur of his Majesty of Great Britain, and how necessary his protection was to them. Upon the return of the said Indian Prince, they persuaded him to resign up his authority and power over them, and with them unanimously declare themselves the subjects of his said Majesty of Great Britain: in which opinion [continues Sir Hans] they have ever since persisted, and do own no other supreme command over them.

I am sure you will agree with me that a worse perversion of history than this can scarcely be found elsewhere. The original authority, when produced, states expressly that the Duke of Albemarle did nothing in the matter. Mr. Edwards suppresses the fact that Lord Warwick's expedition was hostile to Spain; and the opinion attributed to Sir Hans at the close of the extract is found to be not his, but the language of the memorial.

But I am able to go a step further in the history of this curious title, and show the equivalent which the Indian Esau received for his birthright. In a pamphlet first published in 1699 (eight years before the publication of Sir Hans Sloane), and afterwards republished in the sixth volume of Churchill's Voyages, containing an account of the Mosquito shore from a very intelligent person, evidently well acquainted from observation, is the following passage:

He [the King] says that his father, *Oldman*, King of the Mosquito men, was carried over to England soon after the conquest of Jamaica, and there received from his brother King a crown and commission, which the present *Old Jeremy* still keeps safely by him, *which is but a cocked hat, and a ridiculous piece of writing that he should kindly use and relieve such struggling Englishmen as should choose to come that way with plantains, fish, and turtle, &c., &c.*

The words that I have italicised in the latter part of this extract need no comment.

As to the second fact now alleged, I have only to say that the "convention" is published in the Mosquito correspondence submitted to Parliament in 1848; and so far from proving any sovereignty in the Indians, shows the contrary. It is neither treaty nor convention. It is a *contract* between King Jeremy on the one side, signed with "his mark," and Governor Lawes on the other, *sealed with the* PRIVATE *seals of both parties*, by which the King contracts to furnish fifty men to hunt negroes, and the governor to pay for them and give them "rum" enough for the voyage home; very similar to the contract made subsequently with the Spanish hunters of Cuba for the employment of bloodhounds for the same purpose. This is not the mode in which high contracting parties usually deal with each other. Any argument deduced from it is founded in an ignorance of the distinction between a sovereignty in the soil and a dominion over the persons of the savages composing the tribe.

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As to the third fact, without stopping to dwell on its *ex-parte* character, I have reason to think that the move was made in Jamaica at the instance, among others, of this Mr. Edwards, who drew up, to further it, the memorial above alluded to. To show how little the government at home entered into it, in 1776 a vessel called the Morning Star, with certain Indians on board, who had been to England to aid in putting down the practice of selling the Indians into slavery, was seized by the Spanish Guarda Costas on its return to Mosquito. The owners brought the subject before Parliament, presenting with their petition Mr. Edwards' memorial. After a long debate, in which it was asserted that the seizure was justifiable, as the treaty had been violated, Parliament refused to entertain the subject.

I have now examined the only evidence adduced in support of the English claim to a protectorate, and, unless I deceive myself, it dwindles into insignificance. I now resume the historical thread.

The English settlers were lax in conforming to the provisions of the treaty of 1783, the territory allotted to them being found to be too small, and the eighteen months passed away without their removal. Spain began to complain of this infraction, and the result was the treaty of 1786, which, besides, enlarging the territory to be occupied by the English, and making various regulations about it, contains the following provisions:

I. His Britannic Majesty's subjects, and the other colonists who have hitherto enjoyed the protection of England, shall evacuate the country of the Mosquitos, &c.

XI. * * * In this view His Britannic Majesty engages to give the most positive orders for the evacuation of the country above mentioned by all his subjects, of whatever denomination; but if, contrary to such declaration, there should still remain any persons so daring as to presume, by retiring into the interior of the country, to endeavor to obstruct the entire evacuation already agreed upon, His Britannic Majesty, so far from affording them the least succor, or even protection, will disavow them in the most solemn manner, as he will equally do those who may hereafter attempt to settle upon *the territory belonging to the Spanish dominion.*

XIV. His Catholic Majesty, prompted solely by motives of humanity, promises to the King of England that he will not exercise any act of severity against the Mosquitos inhabiting in part the countries which are to be evacuated by virtue of the present convention on account of the connections which may have subsisted between the said Indians and the English. * * *

This was looked upon as an abandonment by England. It was so avowed in Parliament in a debate on a motion to impeach the ministry. Bryan Edwards admits it in the foot-note cited above. The Mosquito settlers themselves considered it so, and put in a claim to Parliament for damages, which was allowed. Extracts from their statement of the grounds of their claim have found their way into the appendix to the Mosquito correspondence of 1848, under the title of "Extracts from McGregor's Commercial Tariffs, Part XVII."

Still later, in the Quarterly Review for October, 1822, article VIII, in a review of a work on Mosquito Shore by one Captain Strangeway, is the following strong language. After saying that—

The whole of the Mosquito Shore and Honduras and the town of Poyais have for many centuries belonged to Spain, and have been considered as constituent portions of the kingdom of Mexico, not one foot of which was ever held by the English, except occasionally during a war, by the buccaneers, or more recently by the logwood cutters;

and reviewing the treaties of 1783 and 1786, the writer says:

Nothing can more clearly establish the sole right of Spain to these territories than the treaty and convention above mentioned. We never had any business there. The simple fact is that the Mosquito Indians have always borne an inveterate dislike to the Spaniards. The Duke of Albemarle, when governor of Jamaica, fostered that dislike, and invested one of the Indians with a commission as chief of the Mosquitos, under the protection of England; a foolish ceremony, which was exercised long after

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by his successor, just as we now make King Toms and King Jacks among the negroes of Western Africa; but, if treaties are to be considered as at all binding, it is quite clear that we have not the right, nor even the permission of residence on the Mosquito Shore, and that we cut logwood and mahogany on the shores of Honduras Bay only by sufferance.

It is worthy of remark that in a reply to the Review, published in 1823, is the admission that "this territory belongs to Spain."

* * * * * * *

I have, &c.,

ABBOTT LAWRENCE.

24.—*Clayton-Bulwer treaty of April 19, 1850.*

The United States of America and Her Britannic Majesty, being desirous of consolidating the relations of amity which so happily subsist between them, by setting forth and fixing in a convention their views and intentions with reference to any means of communication by ship-canal which may be constructed between the Atlantic and Pacific Oceans by the way of the river San Juan de Nicaragua and either or both of the Lakes of Nicaragua or Managua, to any port or place on the Pacific Ocean, the President of the United States has conferred full powers on John M. Clayton, Secretary of State of the United States, and Her Britannic Majesty on the Right Honorable Sir Henry Lytton Bulwer, a member of Her Majesty's most honorable privy council, knight commander of the most honorable Order of the Bath, and envoy extraordinary and minister plenipotentiary of Her Britannic Majesty to the United States, for the aforesaid purpose; and the said plenipotentiaries having exchanged their full powers, which were found to be in proper form, have agreed to the following articles:

ARTICLE I.

The Governments of the United States and Great Britain hereby declare that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said ship-canal; agreeing that neither will ever erect or maintain any fortifications commanding the same or in the vicinity thereof, or occupy, or fortify, or colonize, or assume, or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America; nor will either make use of any protection which either affords or may afford, or any alliance which either has or may have to or with any state or people, for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America, or of assuming or exercising dominion over the same; nor will the United States or Great Britain take advantage of any intimacy, or use any alliance, connection, or influence that either may possess with any state or government through whose territory the said canal may pass, for the purpose of acquiring or holding, directly or indirectly, for the citizens or subjects of the one, any rights or advantages in regard to commerce or navigation through the said canal which shall not be offered on the same terms to the citizens or subjects of the other.

ARTICLE II.

Vessels of the United States or Great Britain traversing the said canal shall, in case of war between the contracting parties, be exempted from

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blockade, detention, or capture by either of the belligerents; and this provision shall extend to such a distance from the two ends of the said canal as may hereafter be found expedient to establish.

ARTICLE III.

In order to secure the construction of the said canal, the contracting parties engage that if any such canal shall be undertaken upon fair and equitable terms by any parties having the authority of the local government or governments through whose territory the same may pass, then the persons employed in making the said canal, and their property used, or to be used, for that object, shall be protected, from the commencement of the said canal to its completion, by the Governments of the United States and Great Britain, from unjust detention, confiscation, seizure, or any violence whatsoever.

ARTICLE IV.

The contracting parties will use whatever influence they respectively exercise with any state, states, or governments, possessing or claiming to possess any jurisdiction or right over the territory which the said canal shall traverse, or which shall be near the waters applicable thereto, in order to induce such states or governments to facilitate the construction of the said canal by every means in their power. And furthermore, the United States and Great Britain agree to use their good offices, wherever or however it may be most expedient, in order to procure the establishment of two free ports, one at each end of the said canal.

ARTICLE V.

The contracting parties further engage, that when the said canal shall have been completed, they will protect it from interruption, seizure, or unjust confiscation, and that they will guarantee the neutrality thereof, so that the said canal may forever be open and free, and the capital invested therein secure. Nevertheless, the Governments of the United States and Great Britain, in according their protection to the construction of the said canal, and guaranteeing its neutrality and security when completed, always understand that this protection and guarantee are granted conditionally, and may be withdrawn by both governments, or either government, if both governments, or either government, should deem that the persons or company undertaking or managing the same adopt or establish such regulations concerning the traffic thereupon as are contrary to the spirit and intention of this convention, either by making unfair discriminations in favor of the commerce of one of the contracting parties over the commerce of the other, or by imposing oppressive exactions or unreasonable tolls upon passengers, vessels, goods, wares, merchandise, or other articles. Neither party, however, shall withdraw the aforesaid protection and guarantee without first giving six months' notice to the other.

ARTICLE VI.

The contracting parties in this convention engage to invite every state with which both or either have friendly intercourse to enter into stipulations with them similar to those which they have entered into with each other, to the end that all other states may share in the honor and advantage of having contributed to a work of such general interest and importance as the canal herein contemplated. And the contracting parties likewise

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agree that each shall enter into treaty stipulations with such of the Central American States as they may deem advisable, for the purpose of more effectually carrying out the great design of this convention, namely, that of constructing and maintaining the said canal as a ship communication between the two oceans for the benefit of mankind, on equal terms to all, and of protecting the same; and they also agree, that the good offices of either shall be employed, when requested by the other, in aiding and assisting the negotiation of such treaty stipulations; and should any differences arise as to right or property over the territory through which the said canal shall pass between the states or governments of Central America, and such differences should in any way impede or obstruct the execution of the said canal, the Governments of the United States and Great Britain will use their good offices to settle such differences in the manner best suited to promote the interests of the said canal, and to strengthen the bonds of friendship and alliance which exist between the contracting parties.

Article VII.

It being desirable that no time should be unnecessarily lost in commencing and constructing the said canal, the Governments of the United States and Great Britain determine to give their support and encouragement to such persons or company as may first offer to commence the same, with the necessary capital, the consent of the local authorities, and on such principles as accord with the spirit and intention of this convention; and if any persons or company should already have, with any state through which the proposed ship canal may pass, a contract for the construction of such a canal as that specified in this convention, to the stipulations of which contract neither of the contracting parties in this convention have any just cause to object, and the said persons or company shall moreover have made preparations, and expended time, money, and trouble, on the faith of such contract, it is hereby agreed that such persons or company shall have a priority of claim over every other person, persons, or company to the protection of the Governments of the United States and Great Britain, and be allowed a year from the date of the exchange of the ratifications of this convention for concluding their arrangements, and presenting evidence of sufficient capital subscribed to accomplish the contemplated undertaking; it being understood that if, at the expiration of the aforesaid period, such persons or company be not able to commence and carry out the proposed enterprise, then the Governments of the United States and Great Britain shall be free to afford their protection to any other persons or company that shall be prepared to commence and proceed with the construction of the canal in question.

Article VIII.

The Governments of the United States and Great Britain having not only desired, in entering into this convention, to accomplish a particular object, but also to establish a general principle, they hereby agree to extend their protection, by treaty stipulations, to any other practicable communications, whether by canal or railway, across the isthmus which connects North and South America, and especially to the inter-oceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by the way of Tehuantepec or Panama. In granting, however, their joint protection to any such canals or railways as are by this article specified, it is always understood by the United States and Great Britain that the

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parties constructing or owning the same shall impose no other charges or conditions of traffic thereupon than the aforesaid governments shall approve of as just and equitable; and that the same canals or railways, being open to the citizens and subjects of the United States and Great Britain on equal terms, shall also be open on like terms to the citizens and subjects of every other state which is willing to grant thereto such protection as the United States and Great Britain engage to afford.

ARTICLE IX.

The ratifications of this convention shall be exchanged at Washington within six months from this day, or sooner if possible.

In faith whereof, we, the respective plenipotentiaries, have signed this convention, and have hereunto affixed our seals.

Done at Washington, the nineteenth day of April, anno Domini one thousand eight hundred and fifty.

JOHN M. CLAYTON. [L. S.]
HENRY LYTTON BULWER. [L. S.]

25.—*Sir H. L. Bulwer to Lord Palmerston.*

[Extract.]

WASHINGTON, *April 28, 1850.* (Received May 14.)

In my previous dispatch of this day I have informed your lordship of my having concluded a treaty with Mr. Clayton respecting the construction of a ship communication between the two oceans of the Atlantic and Pacific, and I have there stated to your lordship that there are some slight differences between the original project transmitted home on the 3d of February and the treaty now concluded.

I have thought it better to explain the nature of these changes, and my reasons for adopting them, in a separate dispatch; and I shall do so, rather according to the manner and time in which they were made, than according to the place in the convention in which they occur.

The first, therefore, I shall refer to is in Article VI, to which are added the words:

And should any differences arise as to right or property over the territory through which the said canal shall pass between the states or governments of Central America, and such differences should in any way impede or obstruct the execution of the said canal, the Governments of Great Britain and the United States will use their good offices to settle such differences in the manner best suited to promote the interests of the said canal, and to strengthen the bonds of friendship and alliance which exist between the contracting parties.

This addition, in reconsidering the matter, was deemed, both by myself and Mr. Clayton, an advantage to the treaty, and a sort of guarantee against future unfriendly disputes between the two governments as to the subject referred to.

The second addition agreed to is in Article VII, to which has been added:

And if any persons or company should already have, with any state through which the proposed ship-canal may pass, a contract for the construction of such a canal as that specified in the convention, to the stipulations of which contract neither of the contracting parties in this convention have any just cause to object; and the said persons or company shall, moreover, have made preparations and expended time, money, and trouble on the faith of such contract, it is hereby agreed, that such per-

sons or company shall have a priority of claim over every other person, persons, or company, to the protection of the Governments of Great Britain and the United States, and be allowed a year from the date of the exchange of the ratifications of this convention for concluding their arrangements, and presenting evidence of sufficient capital subscribed to accomplish the contemplated undertaking, it being understood that if, at the expiration of the aforesaid period, such persons or company be not able to commence and carry out the proposed enterprise, then the Governments of Great Britain and the United States shall be free to afford their protection to any other persons or company that shall be prepared to commence and proceed with the construction of the canal in question.

I should here state to your lordship that, when the treaty was placed under the notice of the chairman of the Committee on Foreign Relations in the Senate, a gentleman of great weight and of the more importance since he belongs to the dominant party in the chamber of which he is a member, considered that it would only be fair that the two governments should give an open and avowed preference by name to an American company which had first conceived and taken steps to carry out the proposed undertaking. This I objected to; but I deemed there could be no objection to giving to any company, under certain fair conditions such as are specified, the preference that was sought, although those conditions applied to a company that was American. In this manner a sort of compromise was effected.

The third alteration adopted is in Article VIII, the whole of which article is remodelled.

This alteration, I must say, was the effect of the joint opinion of Mr. Clayton and myself, both thinking that the article, as amended, was better and more clear, referring especially to two lines of communication which seem the most likely to be adopted, and securing thereby a considerable support to the convention in general, many persons being interested in the Panama and Tehuantepec projects.

The only other change which it is worth while remarking upon occurs the first in the body of the treaty, but was the last mooted or adopted. Your lordship will perceive it by casting your eye over Article I, in which a passage is inserted between the words "Central America," which close the second line in the page, down to "nor will Great Britain or the United States take advantage of any," &c., which occurs in the third line from the bottom of the said page, some few words having been left out to admit of the aforesaid passage. The manner in which this change was effected was as follows:

It struck me that the declaration or note mentioned by your lordship bound our government as to its protection over the Mosquitos, but did not bind the United States Government as to its protection over such other states, even Nicaragua, as it might hereafter form an especial alliance with. Moreover, the pledge that we would not do covertly what we had declared we would not do directly, seemed to me a pledge that it would be more suitable and becoming that both parties should take than that one alone should take.

With these views instead of presenting the note, I embodied in the treaty the substance of the declaration given by your lordship to Mr. Lawrence, constructing that declaration so as to apply to any government or people we do or may protect, and also to any government or people that the United States Government do or may protect. Some discussion took place on this matter, but finally it was so arranged.

As the case now stands it is clearly understood that Her Majesty's Government holds by its own opinions already expressed as to Mosquito, and that the United States does not depart from its opinions also already expressed as to the same subject; but the main question of the canal

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being settled on an amicable basis, and the future relations of the United States and Great Britain being regulated in all other parts of Central America, the discussion of this difference, which has lost its great practical importance, is avoided in an arrangement meant to be as much as possible of a perfectly friendly character.

I need not say that should your lordship wish to make any further statement as to the views of Her Majesty's Government with respect to the protectorate of Mosquito, that statement can still be made; nothing in the present convention is affirmed thereupon, but nothing is abandoned.

I trust that after this statement your lordship will approve of the course I have pursued.

There are various small and verbal differences between the original project and treaty which I have not enumerated, because they leave the general sense the same, and have only been adopted to express that sense more clearly. The word "fortify" is inserted between "occupy and colonize" in the second line from the bottom of the page in Article I, but this word had been used in your lordship's note to Mr. Lawrence, and only imposes in that place an obligation which had already been agreed to and stated elsewhere. The word "blockade" is inserted before the words "detention or capture" in Article II, at the request of several influential persons, but only signifies what detention and capture had already expressed.

H. L. BULWER.

Viscount PALMERSTON, G. C. B.

26.—*Declaration made by Sir Henry Bulwer at the Department of State, June 29, 1850, prior to the exchange of the ratifications of the Clayton-Bulwer treaty.*

In proceeding to the exchange of the ratifications of the convention, signed at Washington on the 19th of April, 1850, between Her Britannic Majesty and the United States of America, relative to the establishment of a communication by ship-canal between the Atlantic and Pacific Oceans:

The undersigned, Her Britannic Majesty's plenipotentiary, has received Her Majesty's instructions to declare that Her Majesty does not understand the engagements of that convention to apply to Her Majesty's settlement at Honduras, or to its dependencies.

Her Majesty's ratification of the said convention is exchanged under the explicit declaration above mentioned.

Done at Washington, the 29th day of June, 1850.

H. L. BULWER.

27.—*Memorandum touching Sir Henry Bulwer's declaration filed by Mr. Clayton in the Department of State at Washington, July 5, 1850.*

The within declaration of Sir H. L. Bulwer was received by me on the 29th day of June, 1850. In reply I wrote him my note of the 4th of July, acknowledging that I understood British Honduras was not embraced in the treaty of the 19th day of April last, but at the same time carefully declining to affirm or deny the British title in their settlement

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or its alleged dependencies. After signing my note last night I delivered it to Sir Henry, and we immediately proceeded, without any further or other action, to exchange the ratifications of said treaty. [* The blank in the declaration was never filled up.] The consent of the Senate to the declaration was not required and the treaty was ratified as it stood when it was made.

JOHN M. CLAYTON.

N. B.—The rights of no central American state have been compromised by the treaty or by any part of the negotiations.

28.—*Charter granted by the State of Nicaragua to the Accessory Transit Company.*

The supreme government of the Republic of Nicaragua, fully authorized by legislative decree of the 13th instant, have agreed, by means of their commissioners, Don Fruto Chamorro and Don Mateo Mayorga, with the sole object of facilitating the construction of the maritime canal, and in accordance with the desires expressed by the company of the said canal, represented by Joseph L. White, esq., to divide and separate from the contract of the 22d of September, 1849, relating to the construction of the said canal through the Isthmus of Nicaragua, the part therein relating to the navigation by steam of the waters of Nicaragua, and to that effect they have agreed to the following convention:

ARTICLE I.

The Republic of Nicaragua authorizes the American, Atlantic, and Pacific Ship-Canal Company to divide and separate from the powers, privileges, and rights granted by the treaty, signed by said government on the 22d September, 1849, and amended the 11th of April, 1850, all the powers, privileges, rights, and duties designated in the Articles 6, 14, 20, 21, 22, 23, 30, 32, 33, 34, and all other articles relating to the navigation of the waters of Nicaragua, not essential to the construction or use of the said ship-canal.

ARTICLE II.

Said company is equally authorized to form another company, distinct and separate, comprised of the same members as the former. This new company shall enjoy the powers and be subject to the duties inserted in the articles aforesaid, provided they are not in contradiction to the rights granted, and to the duties imposed upon the Ship-Canal Company.

ARTICLE III.

The company newly created shall proceed to execute and accomplish the objects of its incorporation, as set forth in the said articles above alluded to, and shall have a right to, and shall have the protection of the Government of Nicaragua, within the same limits and to the same

* The words in brackets appear in the original in ink, but are marked out by lead-pencil marks across their face. When they were so marked is not known. The blanks in the original declaration are filled up with "29th" and "June," written with a different kind of ink from the original.

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extent which have been stipulated in the primary charter of the 22d September, 1849, and its amendments of the 11th of April, 1850, relating to the construction of a ship-canal. All the acts and things which may constitute an infraction of the rights of the Ship-Canal Company, shall equally be considered an infraction of the rights of the company newly created in all that refers to the objects of its institutions.

ARTICLE IV.

The new company, when organized, shall be designated by the name of "The Accessory Transit Company." They shall be a body corporate and politic, with perpetual succession during the time of their legal existence, and they shall have full powers to use their rights and privileges and accomplish fully the duties designated in the present convention and in the aforesaid articles in such manner as may seem to them most convenient and proper, provided that it be not in contradiction to the privileges and duties inserted in the primary charter of the 22d of September, 1849, and amendments thereto of the 11th of April, 1850.

ARTICLE V.

Said company, forming a body corporate and politic, may elect and remove their officers and agents according as they may deem it for their interest; they shall have the faculty of passing and adopting such laws and regulations as they may consider conducive to the better administration of their affairs, in view of securing the enjoyment of their privileges, and for the entire fulfillment of their obligations.

They may fix the amount and value of stock to be issued, and increase the same if necessary; provide the mode of transferring the same, and do all acts and things which are proper and necessary to carry out strictly the purposes of their institution, and according to the above-mentioned articles.

ARTICLE VI.

The company, forming a body corporate and politic, shall elect a board of directors and a president, and shall fix the number of the members thereof, the majority of whom shall determine and adopt all resolutions necessary to carrying out the purposes expressed in the preceding articles, and such others as refer to the right of transit and are not inconsistent with the right of constructing and using the canal. The company may adopt a common seal, and change it if necessary. They may sue and be sued before the tribunals of the state as if they were a natural person.

ARTICLE VII.

All the property, choses in action, things, rights, credits, and effects of the new company shall be free from all charges and duties whatsoever during the existence of the grant, within the limits expressed in the primary charter of the 22d September, 1849, and amendments thereto of the 11th of April, 1850, conceded for the construction of a ship-canal, and for other purposes.

ARTICLE VIII.

This convention, and all the rights and privileges secured by it to the company and conferred by it, shall cease whenever the primary charter

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of the 22d of September, 1849, shall expire by its own limitation, or shall be otherwise forfeited or annulled.

ARTICLE IX.

It is understood and agreed by and between the contracting parties that no expression used in this convention can be or shall be construed as relieving either party from the performance of all the obligations imposed upon them respectively by the charter of the 22d of September, 1849, and amendments thereto of the 11th of April, 1850.

Done and signed in duplicate in the city of Granada, of Nicaragua, the fourteenth day of August, one thousand eight hundred and fifty-one.

[SEAL.] FRUTO CHAMORRO,
MATEO MAYORGA,
J. L. WHITE,
Counsel to and Representative of the American and Atlantic and Pacific Ship-Canal Company.

29.—*Mr. Lawrence to Mr. Webster.*

[Extract.]

164.] LEGATION OF THE UNITED STATES,
London, February 27, 1852. (Received March 13.)

SIR: * * * The report of Colonel Childs is looked for with deep interest, and there does not appear any difficulty in associating persons of both countries able to accomplish so great a work whenever a satisfactory survey shall have been completed.

I have, &c.,

ABBOTT LAWRENCE.

30.—*Mr. Lawrence to Mr. Webster.*

[Extract.]

168.] LEGATION OF THE UNITED STATES,
London, March 26, 1852. (Received April 9.)

SIR: Since my dispatch, No. 164, relative to the proposed survey for a route for a canal between the Atlantic and Pacific Oceans, I have heard nothing further from Messrs. Vanderbilt and White, nor have I received the report of Colonel Childs. * * *

As there can probably be but one canal, as that one should be constructed as well for the wants of the future as those of the present, and as it will doubtless absorb in its construction as much of the private capital of both countries as mercantile persons will desire to invest in it, I am anxious that a preliminary survey like the present should be made in such a way as to insure its completion and excite jealousy in neither country.

It is equally the interest of the United States and of Great Britain to connect the two oceans at the earliest practicable period by the best route, without reference to private interests, even though at an aug-

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mented cost of a few millions of dollars. The canal will be remunerative at any rate. But it is understood that neither government will be interested in its construction beyond the guarantee of the treaty of 1850. Yet each may assist by its advice and encouragement. The present British cabinet, following the example of the last, is, I think, inclined to give to private individuals embarking in this scheme, the aid of its countenance. I respectfully suggest that the same course may be pursued at Washington with great benefit to the country by entering into communication with capitalists and others who might be disposed to aid in completing this most important work.

I have, &c.,

ABBOTT LAWRENCE.

31.—*Arrangement for settling Central American affairs agreed upon between Mr. Crampton and Mr. Webster.*

WASHINGTON, *April 30, 1852.*

The undersigned, Daniel Webster, Secretary of State of the United States, and John Fiennes Crampton, Envoy Extraordinary and Minster Plenipotentiary of her Britannic Majesty, having taken into consideration the state of the relations between the Republics of Costa Rica and Nicaragua in respect to the boundaries between those republics, and between the Republic of Nicaragua and the territory claimed by the Mosquito Indians; and being mutually desirous that all pending differences respecting those questions should be amicably, honorably, and definitely adjusted, do in behalf of their respective governments earnestly recommend to the respective governments of the Republics of Nicaragua and Costa Rica an accommodation and settlement of these differences upon the following basis:

ARTICLE I.

The Mosquito Indians may reserve to themselves out of the territory heretofore claimed or occupied by them on the eastern coast of Central America, a district of country, and the jurisdiction over the same to be bounded as follows, namely: beginning on the shore of the Caribbean Sea at the mouth of the river Rama, which is (according to Bailey's map of Central America, published in London in November, 1850) in 11° 34′ north latitude and 83° 46′ west longitude; running thence due west to the meridian 84° 30′ west longitude from Greenwich; thence due north on said meridian to the river Segovia, Fantasma, or Wanx; thence down said river to the Caribbean Sea; thence southerly along the shore of said sea to the place of beginning; and all the rest and remainder of the territory and lands lying southerly or westerly of said reservation heretofore occupied or claimed by the said Mosquitos, including Greytown, they shall relinquish and cede to the Republic of Nicaragua, together with all jurisdiction over the same in consideration of the net receipts for a period of three years from all duties levied and collected at Greytown at the rate of 10 per cent. ad valorem on all goods imported into the State.

The period of three years to commence on the day when Nicaragua shall formally take possession of and enter into the occupancy of said town. And the said net receipts shall be payable quarterly, or every

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three months, to such agent or agents as may be appointed to receive them.

And the said Republic of Nicaragua hereby agrees not in any way to molest or interfere with the Mosquito Indians within the territory herein reserved by them.

It is also understood that any grants of land which may have been made by the said Mosquitos since the 1st of January, 1848, in that part of the Mosquito territory hereby ceded to Nicaragua, shall not be disturbed, provided the said grants shall not interfere with other legal grants made previously to that date by Spain, by the Central American Confederation, or by Nicaragua, or with the privileges or operations of the Atlantic Ship-Canal Company, or Accessory Transit Company, and shall not include territory desired by the Nicaraguan Government for forts, arsenals, or other public buildings.

II.

It is also understood that nothing in the preceding article shall preclude the conclusion of such voluntary compact and arrangements between the State of Nicaragua and the Mosquito Indians, by which the latter may be definitively incorporated and united with the State of Nicaragua, it being stipulated that in such case the said Mosquito Indians shall enjoy the same rights and be liable to the same duties as the other citizens of the said State of Nicaragua. The municipal and public authority in the town of Greytown shall be held and exercised by the Government of Nicaragua, but said government shall levy no duties of tonnage nor any duties of import on goods imported into Greytown, intended for transit across the isthmus or for consumption in any other state than that of Nicaragua, except such tonnage duty as may be necessary for the preservation of the port and harbor, and the erection and maintenance of necessary light-houses and beacons, and no duty for this or similar purposes shall exceed say 12 cents per ton on each vessel.

III.

The boundary between the Republics of Nicaragua and Costa Rica shall begin on the south bank of the Colorado at its confluence with the sea at high-water mark on said river; thence along said south bank, also at high-water mark, to the confluence of the Colorado with the river San Juan; thence, at high-water mark, along the south bank of the San Juan to its source on Lake Nicaragua; thence, at high-water mark, along the south and west shore of that lake to the point nearest the mouth of the river La Flor; thence by a direct line drawn from that point to the mouth of the said river in the Pacific Ocean. It is understood, however, that Costa Rica retains the right, in common with Nicaragua, to navigate said rivers and lake by said vessels, barges, or vessels towed, but not by steam; but this right is by no means to interfere with the paramount right in Nicaragua or her grantors to appropriate the waters of said rivers and lake for a ship-canal from ocean to ocean, or from the Caribbean Sea to said lake.

It is also understood that the said company entitled "The American Atlantic and Pacific Ship-Canal Company" shall have the privilege of locating on the south bank of the St. John River four of the eight stations or sections of land referred to in the XXVIIth article of the amended charter of said company, as ratified by the Government of Nicaragua on the 11th of April, 1850. If, however, the said company

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should desire to locate more than the said four sections on the south side of the San Juan, the Governments of Nicaragua and Costa Rica will amicably agree in regard to the terms of such location.

IV.

Neither the Government of Nicaragua nor the Government of Costa Rica should be at liberty to erect, or suffer to be erected, any wharf, wall, embankment, or other structure, or to do, or suffer to be done, any thing or act whatever, in the harbor of Greytown, in any part of the Colorado or San Juan Rivers, or on the shore of Lake Nicaragua, which shall obstruct the free operations of the ship-canal or transit company, or hinder the passage of their boats in, along, and through the said harbor of Greytown and rivers Colorado or San Juan. And if, after the proper survey of a route for a ship-canal between the two oceans, it shall be found that it would be preferable for that canal to pass in part along the southern bank of the river San Juan or the Colorado River, the Government of Costa Rica engages to grant any lands and to afford any facilities which may be necessary for the construction of the said canal.

V.

Whereas it is stipulated by Article II, of the convention between Great Britain and the United States of America, concluded at Washington on the 19th day of April, 1850, that vessels of the United States or Great Britain traversing the said canal shall, in case of war between the contracting parties, be exempt from blockade, detention, or capture by either of the belligerents, and that that provision should extend to such a distance from the two ends of the said canal as might thereafter be found expedient to establish; now, for the purpose of establishing such distance within which the vessels of either of said nations shall be exempt from blockade, detention, or capture by either of the belligerents, it is hereby declared that it shall extend to all waters within the distance of twenty-five nautical miles from the termination of said canal on the Pacific and on the Atlantic coasts.

VI.

Whereas by Article VII of the said convention it was among other things stipulated that if any persons or company had already made with any state through which the ship-canal might pass, a contract for the construction of such a canal as that specified in said convention, to the stipulations of which neither of the contracting parties in that convention had any just cause to object; and the said persons or company had moreover made preparations and expended time, money, and trouble on the faith of such contract, it was thereby agreed that such persons or company should have a priority of claim over every other person or persons, or company, to the protection of the Governments of the United States and Great Britain, and should be allowed a year from the date of the exchange of ratifications of that convention for concluding their arrangements, and presenting evidence of sufficient capital subscribed to accomplish the contemplated undertaking; it being understood that if at the expiration of the aforesaid period, such persons or company should not be able to commence and carry out the proposed enterprise, then the Governments of the United States and Great Britain should be free to afford their protection to any other persons or

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company that should be prepared to commence and proceed with the construction of the canal in question. And whereas at the time of the signature of the said convention, a company styled the American Atlantic and Pacific Ship-Canal Company had with the Government of the Republic of Nicaragua a contract for constructing a ship-canal between the said oceans, but, for reasons deemed sufficient by the Governments of Great Britain and the United States, have not hitherto been able to comply with the stipulation which gave them a claim to the protection of the said governments; and whereas no other company has claimed such protection on the same conditions, it is therefore agreed that the further time of one year from the exchange of the ratifications of this convention shall be allowed to the said company to comply with the stipulation aforesaid.

VII.

And whereas by another charter (of April 11, 1850) to the American Atlantic and Pacific Ship-Canal Company, the State of Nicaragua, with a view to facilitate the construction of the canal, has authorized the said company to separate from their said contract of September 22, 1849, the part relating to the navigation of the waters of Nicaragua by steam, under the title of the Accessory Transit Company; and whereas the said Accessory Transit Company has been for some time past in full and successful operation, the Governments of Great Britain and the United States hereby engage to extend their protection to the said Accessory Transit Company in the same manner and to the same extent as by the aforesaid convention of April 19, 1850, and by this convention the said protection is extended to the Atlantic and Pacific Ship-Canal Company; but as the main object of the said convention between Great Britain and the United States of America was to provide for an interoceanic ship-canal between the Atlantic and Pacific, and as that object is still deemed paramount to every other mode of transit, the protection hereby extended to the Accessory Transit Company shall not be construed to interfere with the right to construct said canal by the company which has undertaken to construct the same, or, in case of their failure, by any other persons or company which may be authorized to construct the same; and every grant and privilege conferred upon said Accessory Transit Company shall be subject to the paramount right and privilege of any other persons or company to construct, maintain, and use such canal.

Finally, these propositions, so far as they respect the Governments of Nicaragua and Costa Rica, are advisory and recommendatory; and the immediate consideration of those governments to their consideration is earnestly invoked.

To insure a prompt decision, Mr. Wyke, consul-general of Her Britannic Majesty, clothed with full powers for that purpose, Mr. Kerr, chargé d'affaires of the United States to Nicaragua, and Mr. Walsh, appointed special agent of the United States to the Government of Costa Rica, are authorized to communicate the arrangement proposed to those governments respectively; and, unless the aforesaid Governments of Nicaragua and Costa Rica shall promptly, and without loss of time, concur in the general basis of this arrangement, and adopt proper measures for carrying it into effect, then the Governments of Great Britain and the United States will immediately, as between themselves, jointly adopt such measures as they shall deem advisable to carry into full execution the convention between those governments of April 19, 1850; and to ac-

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complish the design therein contemplated, of an interoceanic communication by canal from the Atlantic to the Pacific Ocean by the way of the river San Juan and the Lake Nicaragua.

JOHN F. CRAMPTON.
DANL. WEBSTER.

32.—*Mr. Webster to Mr. Lawrence.*

[Extract.]

No. 77.] DEPARTMENT OF STATE,
Washington, May 14, 1852.

SIR: Your dispatches, to No. 176, inclusive, have been received.

On the 30th ultimo, as you may have been informed through another channel, Mr. Crampton and myself agreed upon and signed a proposition to Costa Rica and Nicaragua for the adjustment of their disputes upon the subject of boundary, and also for the adjustment of the controversy between Great Britain and Nicaragua in regard to the territory claimed by the Mosquito Indians. If this proposition should be accepted by those republics, a quadripartite treaty will probably be entered into by them, Great Britain, and the United States. A principal impediment to the commencement or successful progress of the ship-canal through Nicaragua will then have been removed.

Considering that the United States and Great Britain have jointly agreed to protect such a canal, and in consequence of their possessions on the coast of the Pacific, and other obvious causes, have a similar interest in its success, it seems desirable that the capital required for its construction should be advanced by the citizens and subjects of both countries. If, however, English capitalists should not be disposed to invest their funds in the enterprise, the means for its construction can easily be obtained in this country whenever our citizens shall be satisfied of its practicability, and that it would yield a regular and fair profit. Convinced of the great importance of the work, the Government of the United States would always be disposed to aid in the prosecution thereof to the full extent of its constitutional power. It is not likely, however, that the canal company will need any such assistance from this government.

The practicability of the canal may now be considered as certain. The survey under Colonel Childs, whose high professional and personal character are probably known to you, was some time since completed. He recently visited this city, bringing with him maps, plans, and estimates for the work. By direction of the President these were laid before Colonels Abert and Turnbull, of the United States Topographical Engineers, for examination and report. The report of these officers has confirmed the accuracy of the estimates of Colonel Childs. No doubt is entertained that they will receive a similar confirmation from any military or civil engineers in England to whom they may be submitted.

* * * * * * *

I am, &c.,

DAN'L WEBSTER.

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33.—*Mr. Lawrence to Mr. Webster.*

No. 188.] LEGATIÓN OF THE UNITED STATES,
London, June 8, 1852. (Received June 26.)

SIR: I have the honor to acknowledge the reception of your dispatch, No. 77, of 14th of May.

I rejoice to learn that Mr. Crampton and yourself have agreed upon and signed a proposition to Costa Rica and Nicaragua for the adjustment of their disputes upon the subject of boundary, and also for the adjustment of the controversy between Great Britain and Nicaragua in regard to the territory claimed by the Mosquito Indians. I hope Nicaragua will accept the proposition, of which, however, I entertain some doubt.

I am not acquainted with the terms of the proposition, nor, indeed, do I deem them of great importance, so that they guarantee perfect safety against aggressions upon the rights of the several parties interested, and prevent collisions between the United States and Great Britain.

With respect to the construction of the canal, I have often expressed my anxious desire that all questions touching the Mosquito Indians and the disputes between Nicaragua and Costa Rica should be definitively settled, in order that the canal company might be organized and the work commenced. In December last, Messrs. Vanderbilt and White wrote to me and to several other persons in London that the report of Colonel Childs would be completed and sent here in February of this year. The report, however, did not arrive, nor do I know the cause of its being delayed. Messrs. Fox, Henderson & Co., after waiting several weeks for it, concluded to send out a corps of engineers on their own account to survey a route between Port Escoces and the Gulf of San Miguel (and perhaps other routes) for a canal. It was proposed to send a British and United States engineer to report upon their surveys, and Lord Malmesbury appointed one on the part of the British Government, who was on the point of embarking for Washington, when, from some cause which his lordship said he would explain, it was decided not to send an engineer. I believe I have already communicated these facts to you. I hope the report of Colonel Childs may soon arrive, as the abundance of money is such as to make the present time favorable for the organization of a company and placing the stock in the hands of capitalists.

I have great confidence in the skill, judgment, and integrity of Colonel Childs; and the fact that Colonels Abert and Turnbull have verified his report will give confidence at home and abroad. I hope the report may be submitted to an examination here in order that a like feeling may be produced and strengthened in this government and people.

There is an understanding among those who have taken a deep interest in this work, that one-half of the stock should be offered to capitalists here, and the remainder to capitalists in the United States, and in case either party declined or did not subscribe for their full amount the other party should have a right to that portion remaining unsubscribed, or the whole if there were no subscriptions. The details, however, of organization must all be left to the proprietors.

I repeat the desire that Colonel Childs' report (and the colonel himself) may be here at an early day, and have, &c.

ABBOTT LAWRENCE.

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34.—*Mr. Lawrence to Mr. Webster.*

[Extract.]

No. 194.] LEGATION OF THE UNITED STATES,
London, July 2, 1852. (Received July 16.)

SIR: * * * I have the honor to transmit also a copy of a note from the Earl of Malmesbury acquainting me with the appointment on the part of Her Majesty's Government of two engineers to examine the report of Colonel Childs respecting the ship canal which it is proposed to construct through the territory of Nicaragua from the Atlantic to the Pacific Ocean, together with a copy of my reply thereto. Lieutenant-Colonel Aldrich and Mr. James Walker, the gentlemen appointed to this service, are eminent in their profession, and any opinion emanating from them will be received by the public with the fullest confidence in their ability and integrity.

* * * * * * *

I have, &c.,

ABBOTT LAWRENCE.

Earl of Malmesbury to Mr. Lawrence.

The Earl of Malmesbury presents his compliments to Mr. Lawrence, and with reference to his letter of the 16th instant, inclosing Colonel Childs' report respecting the ship-canal which it is proposed to construct through the territory of Nicaragua, from the Atlantic to the Pacific Ocean, and suggesting the appointment of two competent engineers to examine that report, has the honor to inform Mr. Lawrence that Lieutenant-Colonel Aldrich, of the Royal Engineers, and Mr. James Walker, the eminent civil engineer, have been appointed by Her Majesty's Government to examine Colonel Childs' report.

Lord Malmesbury begs to add that he has requested the master general of the ordnance to direct Colonel Aldrich to place himself in immediate communication with Mr. Walker, and to proceed to the investigation with the least possible delay.

FOREIGN OFFICE, *June 30, 1852.*

Mr. Lawrence to Earl of Malmesbury.

Mr. Lawrence presents his compliments to the Earl of Malmesbury and begs to acknoweldge the reception of his lordship's note of the 30th instant, acquainting Mr. Lawrence with the appointment of Lieutenant-Colonel Aldrich, of the Royal Engineers, and Mr. James Walker, the eminent civil engineer, to examine the report of Colonel Childs, respecting the ship-canal which it is proposed to construct through the territory of Nicaragua from the Atlantic to the Pacific Ocean.

Mr. Lawrence begs to assure the Earl of Malmesbury of his entire satisfaction at this intelligence, and to express his sense of his lordship's courtesy in expediting the investigation.

UNITED STATES LEGATION,
138 Piccadilly, July 2, 1852.

35.—*Proclamation of the organization of the British colony of the Bay Islands, July 17, 1852.*

PROCLAMATION.

OFFICE OF THE COLONIAL SECRETARY,
Belize, July 17, 1852.

This is to give notice that Her Most Gracious Majesty the Queen has been pleased to constitute and make the islands of Roatan, Bonacca,

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Utilla, Barbarat, Helene, and Morat, to be a colony to be known and designated as "The Colony of the Bay Islands."

AUGUSTUS FREDERICK GORE,
Acting Colonial Secretary.

God save the Queen!

36.—*Mr. Lawrence to Mr. Webster.*

No. 198.] LEGATION OF THE UNITED STATES,
London, August, 13 1852. (Received August 27.)

SIR: I have the honor to inclose a further correspondence between Lord Malmesbury and myself relative to Colonel Childs' report upon the ship-canal between the Atlantic and Pacific Oceans by way of Lake Nicaragua. Lieutenant-Colonel Aldrich and Mr. Walker, the engineers appointed by Lord Malmesbury to examine the report made by Colonel Childs, have reported that the project in the line projected by Colonel Childs is practicable; that the survey made by him has every appearance of accuracy; that the works are generally sufficient for the purpose they are intended to answer; and that the estimates upon the present value of money are adequate. The British capitalists have the matter now under consideration. I have delayed sending you th correspondence, hoping to give you their decision with it.

I have, &c.,

ABBOTT LAWRENCE.

Lord Malmesbury to Mr. Lawrence.

Immediate.]

FOREIGN OFFICE, *July 16, 1852.*

SIR: In compliance with the suggestion contained in your letter of the 16th ultimo, that engineers possessing well-known skill and experience should be appointed on the part of Her Majesty's Government to examine the report of Colonel Childs on the ship-canal to be constructed through the Nicaraguan territory, from the Atlantic to the Pacific Ocean, that report having been already examined and approved by Colonels Abert and Turnbull, two distinguished officers of the Topographical Engineers of the United States, I have the honor to inform you that Lieutenant-Colonel Aldrich, of the Royal Engineers, and Mr. James Walker, an eminent civil engineer, were accordingly requested by me to perform that duty.

Those gentlemen readily assented to that request, and I have now the honor to transmit to you their report, accompanied by four inclosures upon the papers submitted to their inspection, being the documents which were inclosed in your letter of the 21st of June.

I have, &c.,

MALMESBURY.

Mr. Lawrence to Lord Malmesbury.

LEGATION OF THE UNITED STATES,
138 Piccadilly, July 17, 1852.

MY LORD: I have the honor to acknowledge the receipt of your lordship's letter of the 16th, inclosing the report of Lieutenant-Colonel Aldrich and Mr. James Walker upon Colonel Childs' report on the ship-canal to be constructed through the Nicaraguan territory, from the Atlantic to the Pacific Ocean, and I beg your lordship to accept my thanks for the great promptness with which you have complied with my request in this matter.

I have, &c.,

ABBOTT LAWRENCE.

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[Extract.]

REPORT OF THE BRITISH ENGINEERS UPON THE REPORT OF COLONEL CHILDS.

From the foregoing premises and subject to our observations on particular works (especially as to Brito Harbour), *to which we beg to refer*, our opinion, with reference to the propositions contained in your letter to Mr. Walker, is—

1. That the project of a ship-canal from the Atlantic to the Pacific on a line projected by Colonel Childs is practicable, and would not be attended with engineering difficulties beyond what might be naturally expected in a work of this magnitude.

2. That the survey has every appearance of accuracy; that the details of specifications, working-drawings, &c., prepared under Colonel Childs' directions, by Mr. Fay, Mr. Fitzgerald, and others, have been got out with great care, and that Colonel Childs has impressed us with a conviction of perfect fairness and candor on his part.

3. That the works are generally sufficient for the purpose they are intended to answer.

4. That the estimates upon *the present value of money* are adequate, in a general way, so far as judgment can be formed of them from the documents produced and the explanations of Colonel Childs, which, as will be seen from his evidence, were particular and given in great detail.

We shall perhaps be considered as interpreting the word *"sufficiency"* in your instructions in a liberal sense, when we add, that to make the navigation 20 feet deep in place of 17 feet, and the locks 300 feet long in place of 250, and the canal 60 feet in place of 50 feet wide,* would, in our opinion, be rendering the navigation more efficient for the general purposes of trade by steam and sailing vessels. Colonel Childs (see his answers to questions 223 and 224) does not see any difficulty in doing this, excepting the expense, which would, we think, be unimportant when compared with the advantages.

The great additional expense would be in the deep cutting west of the lake, two or three miles of which might be left of the smaller width, if present saving be a great object. We find that the original instructions to Colonel Childs† directed the estimates and surveys to be made for a canal of sufficient depth of water for vessels of the largest class; and if the junction of the Pacific with the Atlantic be worth doing at all, it is worth doing *well*.

JAMES WALKER,
Civil Engineer.

EDWARD ALDRICH,
Captain and Lieutenant-Colonel, Commander Royal Engineers, London District.

LONDON, *July 16, 1852.*

37.—*Mr. Marcy to Mr. Borland.*

[Extract.]

No. 8.] DEPARTMENT OF STATE,
Washington, December 30, 1853.

SIR: Your several dispatches, to No. 11, inclusive, have been received at this Department.

In relation to the Clayton and Bulwer treaty, about which so much is said in your dispatches, I have only to remark that this government considers it a subsisting contract, and feels bound to observe its stipulations so far as by fair construction they impose obligations upon it.

If Great Britain has failed, or shall fail, on her part to fulfill the obligations she has therein assumed, or if she attempts to evade them by a misconstruction of that instrument, the discussions that may arise on these subjects must necessarily take place between the parties to it. The views taken of that treaty by the United States, and your course in relation to it, pointed out in your first instructions, will be observed

* The remark may apply more particularly to the trade with Britain, for which vessels upwards of 300 feet in length are now building or proposed.

† See page 4, Colonel Childs' Report.

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until you receive notice of their modification. In these instructions you were furnished with the views of one of the contracting parties (Great Britain), but at the same time you were informed that the United States did not concur in them. In the negotiations at London, in regard to the affairs of Central America, the meaning of that instrument will come directly under discussion. So far as respects your mission, you will regard it as meaning what the American negotiator intended when he entered into it, and what the Senate must have understood it to mean when it was ratified, viz, that by it Great Britain came under engagements to the United States to recede from her asserted protectorate of the Mosquito Indians, and to cease to exercise dominion or control in any part of Central America. If she had any colonial possessions therein at the date of the treaty, she was bound to abandon them, and equally bound to abstain from colonial acquisitions in that region. In your official intercourse with the states of Central America, you will present this construction of the treaty as the one given to it by your government.

It is believed that Great Britain has a qualified right over a tract of country called the Belize, from which she is not ousted by this treaty, because no part of that tract, when restricted to its proper limits, is within the boundaries of Central America.

* * * * * * *

I am, &c.,

W. L. MARCY.

38.—*Statement of Mr. Buchanan for Lord Clarendon.*

[Extract.]

LEGATION OF THE UNITED STATES,
London, January 6, 1854.

Mr. Monroe, one of our wisest and most discreet Presidents, announced in a public message to Congress in December, 1823, that "the American continents, by the free and independent condition which they have assumed and maintained, are henceforth not to be considered subjects for future colonization by any European powers." This declaration has since been known throughout the world as the "Monroe doctrine," and has received the public and official sanction of subsequent Presidents, as well as of a large majority of the American people. Whilst this doctrine will be maintained whenever, in the opinion of Congress, the peace and safety of the United States shall render this necessary, yet to have acted upon it in Central America might have brought us into collision with Great Britain, an event always to be deprecated, and, if possible, avoided. We can do each other the most good, and the most harm, of any two nations in the world, and, therefore, it is our strong mutual interest as it ought to be our strong mutual desire, to remain the best friends. To settle these dangerous questions, both parties wisely resorted to friendly negotiations, which resulted in the convention of April, 1850. May this prove to be instrumental in finally adjusting all questions of difficulty between the parties in Central America, and in perpetuating their peace and friendship.

Surely the Mosquito Indians ought not to prove an obstacle to so happy a consummation.

* * * * * * *

JAMES BUCHANAN.

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39.—*Statement of Lord Clarendon for Mr. Buchanan.*

[Extract.]

FOREIGN OFFICE, *May 2, 1854.*

* * * * * * *

It was never in the contemplation of Her Majesty's Government, nor in that of the Government of the United States, that the treaty of 1850 should interfere in any way with Her Majesty's settlement at Belize or its dependencies. It was not necessary that this should have been particularly stated, inasmuch as it is generally considered that the term "Central America"—a term of modern invention—could only appropriately apply to those states at one time united under the name of the "Central American Republics," and now existing as five separate republics; but, in order that there should be no possible misconception at any future period relative to this point, the two negotiators at the time of ratifying the treaty exchanged declarations to the effect that neither of the governments they represented had meant in such treaty to comprehend the settlement and dependencies in question.

Mr. Clayton's declaration to Her Majesty's Government on this subject was ample and satisfactory, as the following extract from his note of July 4, 1850, will show:

> The language of the first article of the convention concluded on the 19th day of April last, between the United States and Great Britain, describing the country not to be occupied, &c., by either of the parties, was, as you know, twice approved by the government, and it was neither understood by them nor by either of us [the negotiators] to include the British settlement in Honduras (commonly called British Honduras, as distinct from the state of Honduras) nor the small islands in the neighborhood of that settlement which may be known as its dependencies.
>
> To this settlement and these islands the treaty we negotiated was not intended by either of us to apply. The title to them is now and has been my intention throughout the whole negotiation to leave as the treaty leaves it, without denying or affirming or in any way meddling with the same, just as it stood previously.
>
> The chairman of the Committee on Foreign Relations of the Senate, the Hon. W. N. King, informs me that the Senate perfectly understood that the treaty did not include British Honduras.

Such having been the mutual understanding as to the exception of the settlement of Belize and its dependencies from the operation of the treaty, the only question relative to this settlement and its dependencies in reference to the treaty that can now arise is as to what is the settlement of Belize and its dependencies, or, in other words, as to what is British Honduras and its dependencies.

Her Majesty's Government certainly understood that the settlement of Belize as here alluded to is the settlement of Belize as established in 1850; and it is more warranted in this conclusion from the fact that the United States had, in 1847, sent a consul to this settlement, which consul had received his exequatur from the British Government—a circumstance which constitutes a recognition by the United States Government of the settlement of British Honduras under Her Majesty as it then existed.

Her Majesty's Government at once states this, because it perceives that Mr. Buchanan restricts the said settlement within the boundaries to which it was confined by the treaty of 1786, whilst Her Majesty's Government not only has to repeat that the treaties with old Spain cannot be held, as a matter of course, to be binding with respect to all the various detached portions of the old Spanish-American monarchy,

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but it has also to observe that the treaty of 1786 was put an end to by a subsequent state of war between Great Britain and Spain; that during that war the boundaries of the British settlement in question were enlarged; and that when peace was re-established between Great Britain and Spain no treaty of a political nature, or relating to territorial limits, revived those treaties between Great Britain and Spain which had previously existed.

Her Majesty's Government, in stating this fact, declares distinctly, at the same time, that it has no projects of political ambition or aggrandizement with respect to the settlement referred to; and that it will be its object to come to some prompt, fair, and amicable arrangement with the states in the vicinity of British Honduras for regulating the limits which should be given to it, and which shall not henceforth be extended beyond the boundaries now assigned to them.

* * * * * * *

CLARENDON.

40.—*Remarks by Mr. Buchanan in reply to Lord Clarendon's statement of May 2.*

[Extract.]

LEGATION OF THE UNITED STATES,
London, July 22, 1854.

* * * * * * *

In regard to Belize proper, confined within its legitimate boundaries, under the treaties of 1783 and 1786, and limited to the usufruct specified in these treaties, it is necessary to say but a few words. The Government of the United States will not, for the present, insist upon the withdrawal of Great Britain from this settlement, provided all the other questions between the two governments concerning Central America can be amicably adjusted. It has been influenced to pursue this course partly by the declaration of Mr. Clayton, of the 4th of July, 1850, but mainly in consequence of the extension of the license granted by Mexico to Great Britain under the treaty of 1826, which that republic has yet taken no steps to terminate.

It is, however, distinctly to be understood that the Government of the United States acknowledge no claim of Great Britain within Belize except the temporary "liberty of making use of the wood of the different kinds, the fruits, and other produce in their natural state," fully recognizing that the former "Spanish sovereignty over the country" belongs either to Guatemala or to Mexico.

In conclusion, the Government of the United States most cordially and earnestly unites in the desire expressed by "Her Majesty's Government, not only to maintain the convention of 1850 intact, but to consolidate and strengthen it by strengthening and consolidating the friendly relations which it was calculated to cement and perpetuate." Under these mutual feelings it is deeply to be regretted that the two governments entertain opinions so widely different in regard to its true effect and meaning.

JAMES BUCHANAN.

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41.—*Decree of the President of Nicaragua annulling the grant to the American Atlantic and Pacific Ship-Canal Company.*

Whereas the Republic of Nicaragua, on the 22d day of September, 1840 (one thousand eight hundred and forty-nine), granted to the American Atlantic and Pacific Canal Company certain rights and privileges, were subsequently modified by decree of the 11 day of April, 1850 (one thousand eight hundred and fifty), and whereas, in consideration of said rights and privileges, said company agreed to construct a ship-canal across the territory of said republic from the port of San Juan de Nicaragua to the port of Realejo, Gulf of Fonseca, Tamarinda, San Juan del Sud, or any of the points on the Pacific Ocean which the engineers of the company might decide upon, or in case that the construction and completion of said canal or any point of it should become impossible, by any unforeseen event or insurmountable obstacle of nature, to construct a railroad or rail & carriage road and water communication between the two oceans; and

Whereas the said American Atlantic and Pacific Ship-Canal Company have not constructed the said canal or commenced the same, but, on the contrary, has abandoned the undertaking and declared it impracticable, and have also failed to construct a railroad or rail and carriage road, as they agreed to do; and

Whereas the said American Atlantic and Pacific Ship-Canal Company was bound by the terms of said charter to pay the Republic of Nicaragua ten thousand dollars annually, and ten per cent. on the net profits of any route the company might establish between the two oceans during the time allotted for the completion of the canal and in furtherance thereof; and

Whereas the said American Atlantic and Pacific Canal Company have failed to pay annually said ten thousand dollars, together with the said ten per cent. net profits, falsely and fraudulently alleging that no profits were made and commission due; and

Whereas, by the said charter, it was stipulated that, for the purpose of settling all matters in dispute between the state and the company, commissioners should be appointed by the state on the one part and the company on the other; and

Whereas, on the 12th day of September, 1855 (one thousand eight hundred and fifty-five), the Republic of Nicaragua notified the said company to appoint commissioners under the charter, and the said company expressly refused the same; and

Whereas, by decree of the 9th day of March, 1850 (one thousand eight hundred and fifty), the said company was made a body politic and corporate, with perpetual succession, by the name and description of "The American Atlantic and Pacific Ship-Canal Company"; and

Whereas, on the 14th day of August, 1851 (one thousand eight hundred and fifty-one), the Republic of Nicaragua, with the sole object of facilitating the maratime canal, and in accordance with the desires expressed by the company of said canal to divide and separate from the contract of 22d September, 1849 (one thousand eight hundred and forty-nine), the part therein relating to the navigation by steam of the waters of Nicaragua, did constitute a new company, designated by the name of "Accessory Transit Company," and consisting of the same persons comprising the American Atlantic and Pacific Ship-Canal Company, and subject to the same obligations: Now, therefore,

The supreme provisional Government of Nicaragua, in virtue of the faculties,

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DECREES:

1. The grant to the American Atlantic and Pacific Canal Company, of date 22d September, 1849 (one thousand eight hundred and forty-nine), and the modifications thereof, made 11th day of April, 1850 (one thousand eight hundred and fifty), and all the privileges therein contained, are *revoked* and *annulled;* the acts of incorporation of said company, of date 9th day of March, 1850 (one thousand eight hundred and fifty), and of the "Accessory Transit Company," of date 14 day of August, 1851 (one thousand eight hundred and fifty-one), *are annulled*, and the said American Atlantic and Pacific Ship Canal Company and Accessory Transit Company *are dissolved and abolished*, except for the purposes hereinafter mentioned.

2. Señor Don Cleto Mayorga, Señor Don Eduardo I. C. Kewen, and Señor Don George F. Alden (any two of whom may act) are hereby appointed a board of commissioners, with full powers to *examine*, *liquidate*, and *ascertain* the amount due by the said American Atlantic and Pacific Canal Company and Accessory Transit Company to the state, with full powers to send for persons and papers, and to enforce respect and obedience to all their orders and decrees.

3. The said board shall proceed at once to discharge these duties, and for this purpose shall notify the agent of the companies residing in Nicaragua to appear before them forthwith, to give all evidence that may be required of them, and with the privilege to defend the interest of their principals.

4. The said companies shall be considered still in existence for the purpose of conducting this examination, and for the purpose of being held collectively responsible for such sum as may be ascertained to be due to the state, but for no other.

5. For the purpose of securing the payment of such amount the said board find due, they are hereby commanded to cause all the property of said companies to be seized forthwith and held by responsible persons, subject to the order of said board.

6. That the transit of passengers across this isthmus may suffer no interruption the board are authorized to deliver to such responsible persons as may make application all the said property so seized upon their executing a bond in a sum one-fourth greater than its appraised value, and with the conditions that the same shall be forthcoming when called for by the said board, and that the undertakers in the bond shall continue to transport the passengers who may arrive on the side of the Atlantic & Pacific Oceans, and the expenses of transporting said passengers shall be charged against the said companies.

7. Before allowing the said property to be bonded the board shall cause the same to be fairly approved by three competent persons appointed for the purpose.

8. The board shall proceed summarily and with dispatch, and on determining the amount due from the companies to the state shall report their proceedings immediately to the government.

9. The compensation of the board of commissioners, as well as of the board of appraisers, by them appointed, will be hereafter determined.

10. Let this be communicated to the proper authorities.

Given at Granada the 18th day of February, 1856.

PATRICIO RIVAS.

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42.—*Additional article to the treaty of friendship, commerce, and navigation between Great Britain and Honduras, signed at London, August 27, 1856.*

Inasmuch as a contract was entered into by the Government of Honduras, and a company entitled "The Honduras Interoceanic Railway Company," for the construction of a railway from the Atlantic to the Pacific Oceans through the territories of Honduras, which contract was ratified by the constitutional powers of the state, and proclaimed as a law on the 28th day of April, 1854; and inasmuch as by the terms of Article V, section 6, of the said contract, "the Government of Honduras, with a view to secure the route herein contemplated from all interruption and disturbance, from any cause or under any circumstances, engages to open negotiations with the various governments with which it may have relations, for their separate recognition of the perpetual neutrality, and for the protection of the aforesaid route:" Therefore, in order to carry out the obligation thus incurred,

1. The Government of Honduras agrees that the right of way or transit over such route or road, or any other that may be constructed through its territories, from sea to sea, shall be at all times open and free to the Government and subjects of Great Britain, for all lawful purposes whatever. No tolls, duties, or charges of any kind shall be imposed by the Government of Honduras on the transit of property belonging to the Government of Great Britain, or on the public mails sent under the authority of the same, nor on the subjects of the British Crown. All lawful produce, manufactures, merchandise, or other property belonging to subjects of Great Britain, passing from one ocean to the other, in either direction, shall be subject to no import or export duties whatever, nor to any discriminating tolls or charges for conveyance or transit on any such route or road as aforesaid, and shall be secure and protected from all interruption and detention on the part of the state.

The Republic of Honduras further agrees that any other privilege or advantage, commercial or other, which is or may be granted to the subjects or citizens of any other country in regard to any such route or road as aforesaid, shall be also and at the same time extended to British subjects; and, finally, as an evidence of its disposition to accord to the travel and commerce of the world all the advantages resulting from its position in regard to the two great oceans, the Republic of Honduras, of her own good will, engages to establish the ports at the extremities of the contemplated road as free ports for all the purposes of commerce and trade.

2. In consideration of these concessions, and in order to secure the construction and permanence of the route or road herein contemplated, and also to secure for the benefit of mankind the uninterrupted advantages of such communication from sea to sea, Her Britannic Majesty recognizes the rights of sovereignty and property of Honduras in and over the line of the said road, and for the same reason guarantees, positively and efficaciously, the entire neutrality of the same so long as Great Britain shall enjoy the privileges conceded to it in the preceding section of this article. And when the proposed road shall have been completed Her Britannic Majesty equally engages, in conjunction with the Republic of Honduras, to protect the same from interruption, seizure, or unjust confiscation from whatsoever quarter the attempt may proceed.

Nevertheless, Her Britannic Majesty, in according her protection to the said route or road, and guaranteeing its neutrality and security

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when completed, always understands that this protection and guarantee are granted conditionally, and may be withdrawn by her if she should deem that the persons or company undertaking or managing the same adopt or establish such regulations concerning the traffic thereupon as are contrary to the spirit and intention of this article, either by making unfair discriminations in favor of the commerce of any nation or nations over the commerce of any other nation or nations, or by imposing oppressive exactions or unreasonable tolls upon passengers, vessels, goods, wares, merchandize, or other articles.

The aforesaid protection and guarantee shall not, however, be withdrawn by Her Britannic Majesty without first giving six months' notice to the Republic of Honduras.

The present additional article shall have the same force and validity as if it were inserted word for word in the treaty of friendship, commerce, and navigation signed this day. It shall be ratified, and the ratifications shall be exchanged at the same time; and its stipulations shall, subject to the same condition of notice on the part of Her Britannic Majesty, provided for in the preceding paragraph of this article, be permanent between the contracting parties.

In witness whereof the respective plenipotentiaries have signed the same and have affixed thereto their respective seals.

Done at London the 27th day of August, in the year of our Lord 1856.

[L. S.] CLARENDON.
[L. S.] VR. HERRAN.

43.—*Lord Napier to Lord Clarendon.*

No. 5.] WASHINGTON, *March 12, 1857.* (Received March 29.)

MY LORD: I had this afternoon an interview with General Cass, when I requested that he would communicate to me the views taken in the Senate with reference to the Central American treaty, as far as was consistent with the secrecy of the pending deliberation.

The Secretary of State replied that the subject was at that very hour under discussion, and that opinions were divided in the following manner: Some held that the treaty should be sanctioned in its original form, others that it should be accepted with certain modifications, while a third party advocated its rejection, but proposed to temper this course by the adoption of certain resolutions embodying sentiments of a friendly disposition towards Great Britain, and approving a settlement of the Central American question in conformity with the spirit of the treaty agreed to by your lordship and Mr. Dallas. General Cass appeared to anticipate that the last alternative would prevail.

I remarked that I was not surprised by the result which he predicted, for impressions of a similar character had been imparted to me at New York; but I added that Her Majesty's Government would certainly learn with concern that all the efforts of Mr. Dallas, aided by your lordship's generous co-operation, had not succeeded in framing an arrangement acceptable to the Senate; such an issue had not been anticipated by the United States minister, and your lordship's expectations of the success of the treaty had been confirmed by the intelligence derived from Mr. Dallas that he (General Cass) had given the measure his support in the first instance.

The Secretary of State explained that at an early period a general outline of the projected arrangement had reached him, and had certainly

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obtained his warm approval, but that when he came to know the details more accurately he recognized in them principles of foreign intervention repugnant to the policy of the United States. The treaty engaged the Government of the United States to combine with that of Great Britain in urging a certain course of conduct on a foreign state. This could not be allowed; it was not consistent with the common practice of his country. The object, indeed, was good, and he hoped it might be attained in another shape. It might be prosecuted by a direct and distinct negotiation between Great Britain and Nicaragua, in which Her Majesty's Government would, if necessary, have the good offices of the President.

General Cass then passed some reflections on the Clayton-Bulwer treaty; he had voted for it, and in doing so he believed that it abrogated all intervention on the part of England in the Central American territory. The British Government had put a different construction on the treaty, and he regretted the vote he had given in its favor. He did not, however, pretend that the British Government should now unconditionally abandon the Mosquitos with whom they had relations of an ancient date; it was just and consistent with the practice of the United States that those Indians should be secured in the separate possession of lands, the sale of which should be prohibited, and in the enjoyment of rights and franchises, though in a condition of dependency and protection. The British Government had already removed one impediment to the execution of the Bulwer-Clayton treaty by the cession of their claims on Ruatan; two difficulties now remained, the frontier of Belize and the delimitation and settlement of the Mosquito tribe. If the frontier could be defined, and if the Mosquitos could be placed in the enjoyment of their territory by treaty between Great Britain and Nicaragua, in which the concessions and guarantees of the latter in favor of the Indians should be associated with the recognition of the sovereignty of Nicaragua—so I understood the general—then the Bulwer-Clayton treaty might be a permanent and satisfactory settlement between the contracting parties. The United States desired nothing else but an absolute and entire neutrality and independence of the Central American region, free from the exercise of any exclusive influence or ascendency whatever.

The Secretary of State terminated a rather desultory conversation on these matters by stating that his present remarks were to be regarded as of a merely general and speculative nature. The Senate had not yet pronounced; as soon as the decision was known and the resolutions taken they should be transmitted to your lordship through Mr. Dallas, and communicated to myself.

General Cass, before I took my leave, offered me an emphatic assurance of good will to the Government of Great Britain, and expressed the satisfaction which he hoped to find in his correspondence with Her Majesty's mission.

I have, &c.,

NAPIER.

The EARL OF CLARENDON.

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44.—*Lord Napier to Lord Clarendon.*

[Extract.]

No. 14.] WASHINGTON, *May* 6, 1857. (Received May 25.)

On receiving your lordship's dispatch of the 17th ultimo on the 2d instant, informing me that Her Majesty's Government had not found it expedient to ratify the Central American treaty in its altered shape, and instructing me to propose the conclusion of a new treaty embodying all the resolutions of the United States Senate, with the single addition framed as a safeguard for British interests in the Bay Islands, I determined not to carry your lordship's orders into execution without previously soliciting an interview with the President. His excellency did me the honor to appoint an early day for this purpose, but an attack of illness prevented me from availing myself of his goodness, and it was not until this afternoon that I was enabled to pay my respects to his excellency.

I found the President fully informed of the grounds on which Her Majesty's Government had based their resolution, and of their desire to enter into new engagements, but I think he entertained an impression that the reason alleged by Her Majesty's Government did not really express the whole or the most cogent motive of their objections, and he was not apprised of the terms of the simple qualification which Her Majesty's Government propose to add to the treaty as modified by the Senate.

I placed your lordship's instructions in the hands of the President. He assured me that he was now quite convinced that the non-ratification of the Honduras treaty formed the true and only motive for the rejection of that negotiated by your lordship with Mr. Dallas; that he could hardly understand the importance attached to this point by Her Majesty's Government; that he deeply regretted their determination, and that it was the last ground on which he had anticipated any reluctance.

The President thought Her Majesty's Government had acted unwisely in neglecting this opportunity to close the Central American discussions and place the relations of the two countries on a satisfactory basis at a moment when the public feeling was so friendly on either side of the Atlantic.

After reading the article proposed by Her Majesty's Government he told me, not without some appearance of regret, that unless he changed his opinion, of which he saw little prospect, he could not assent to a stipulation which would involve the recognition by his government of a treaty between Great Britain and Honduras relative to the Bay Islands, and if he did accept such a stipulation it would infallibly be rejected by the Senate.

I argued that whatever there was repugnant to the feelings of the Senate in reference to slavery, or whatever there was unacceptable in regard to trade or government in the treaty of August 27, 1856, might be subjected to some change, and I offered to bring his views on this subject under your lordship's notice, but his excellency held out no hope; his objection pointed to the recognition of any treaty at all—to the bare allusion to it. Great Britain and Honduras might frame any settlement they pleased for the future government of the islands; it was their business, not that of the United States. The United States could not take cognizance of those arrangements in any degree, however remote and indirect.

Finding the President quite firm in this position, I shifted the discus-

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sion to the relations of the two countries in case of the official rejection of your lordship's present proposal, remarking that we should fall back on the Clayton-Bulwer treaty, a basis which, if not fixed by arbitration or in some other way, would break up under our feet.

The President denounced the Clayton-Bulwer treaty as one which had been fraught with misunderstanding and mischief from the beginning; it was concluded under the most opposite constructions by the contracting parties. If the Senate had imagined that it could obtain the interpretation placed upon it by Great Britain, it would not have passed. If he had been in the Senate at the time, that treaty never would have been sanctioned. With reference to arbitration (which I had only thrown in as a suggestion of my own), he observed that he could not give any opinion at present. The President also inveighed against the success of treaties, affirming that they were more frequently the cause of quarrel than of harmony, and that, if it were not for the interoceanic communications, he did not see there was any necessity for a treaty respecting Central America at all.

NAPIER.

The EARL OF CLARENDON.

45.—*General Cass to Lord Napier.*

WASHINGTON, *May 29, 1857.*

MY LORD: I have received your lordship's note of the 6th instant, communicating the resolution of the British Government to advise the Queen not to ratify the treaty of the 17th October, 1856, respecting the affairs of Central America, and which had been modified by the Senate of the United States, and in its modified form submitted for the consideration and action of your government. I have laid before the President this note, together with the accompanying projet of a new treaty, and I have received his instructions to make known to you his views upon the subject.

The Clayton-Bulwer treaty, concluded in the hope that it would put an end to the differences which had arisen between the United States and Great Britain concerning Central American affairs, had been rendered inoperative in some of its most essential provisions by the different constructions which had been reciprocally given to it by the parties; and little is hazarded in saying that had the interpretation since put upon the treaty by the British Government, and yet maintained, been anticipated it would not have been negotiated under the instructions of any Executive of the United States nor ratified by the branch of the government intrusted with the power of ratification.

A protracted discussion, in which the subject was exhausted, failed to reconcile the conflicting views of the parties; and as a last resort a negotiation was opened for the purpose of forming a supplementary treaty which should remove, if practicable, the difficulties in the way of their mutual good understanding, and leave unnecessary any further discussion of the controverted provisions of the Clayton-Bulwer treaty. It was to effect this object that the Government of the United States agreed to open the negotiations which terminated in the treaty of October 17th, 1856, and though the provisions of that instrument, even with the amendments proposed by the Senate, were not wholly unobjectionable either to that body or to the President, still, so important

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did they consider a satisfactory arrangement of this complicated subject that they yielded their objections and sanctioned, by their act of ratification, the convention as amended. It was then transmitted to London for the consideration of Her Britannic Majesty's Government, and having failed to meet its approbation has been returned unratified. The parties are thus thrown back upon the Clayton-Bulwer treaty, with its disputed phraseology and its conflicting interpretations; and, after the lapse of seven years, not one of the objects connected with the political condition of Central America, which the United States had hoped to obtain by the arrangement, has been accomplished.

Under these circumstances your lordship informs me that the British Government, appreciating the differences which this subject has caused "between the two countries," have determined to propose to the United States the conclusion of a new treaty, and in conformity with your instructions this proposition is accompanied with the *projet* of a convention which, if ratified by the President and Senate of the United States, it is engaged will be ratified by Her Britannic Majesty.

The draft presented is identical in its language with the treaty of October, as ratified by the Senate, except that to that clause of the second separate article which provides for the recognition of the Bay Islands "as under the sovereignty and as part of the Republic of Honduras" there is added the provision:

> Whenever and so soon as the Republic of Honduras shall have concluded and ratified a treaty with Great Britain by which Great Britain shall have ceded, and the Republic of Honduras shall have accepted, the said islands, subject to the provisions and conditions contained in the said treaty.

This provision is a substitute for the provision relating to the same subject contained in the rejected treaty, and which referred to a subsisting convention with Honduras for the cession to that republic of the Bay Islands. Taken in connection with this convention, of which your lordship was good enough on the 10th instant to communicate a copy to this department, upon my application, that provision, whilst declaring the Bay Islands to be "a free territory under the sovereignty of the Republic of Honduras," deprived that country of rights without which its sovereignty over them could scarcely be said to exist. It separated them from the remainder of Honduras, and gave them a government of their own, with their own legislative, executive, and judicial officers, elected by themselves. It deprived the government of Honduras of the taxing power in every form, and exempted the people of the Bay Islands from the performance of military duty, except for their own defense, and it prohibited the republic from providing for the protection of these islands by the construction of any fortifications whatsoever, leaving them open to invasion from any quarter. Had Honduras ratified this treaty, she would have ratified the establishment of an "independent" state within her own limits, and a state at all times liable to foreign influence and control. I am not, therefore, surprised to learn from your lordship that "Her Majesty's Government do not expect that this treaty, in its present shape, will be definitely sanctioned by that republic."

But, while this expectation may be justified by the event, it is certain that the new provision, like the former one, contemplates the cession of the Bay Islands to Honduras, only upon certain "conditions," and that these conditions are to be sanctioned by this government. The proposition, therefore, though changed in form, is the same in substance with that which was recently rejected by the Senate of the United States, and a just respect for the Senate would prevent the President from now consenting to its insertion in a new treaty. The action of that body,

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moreover, met his cordial approbation, because it is his firm conviction that the Bay Islands are a part of the territory of Honduras, and justly subject to its government and to no other authority. Entertaining this opinion, it would be impossible for him to sanction any arrangement by which their restoration may be made dependent upon conditions either already prescribed or left to be prescribed hereafter. The case of these islands, as your lordship is aware, stands out in bold relief from all the other subjects embraced in the Clayton-Bulwer treaty. That instrument provided that neither of the parties should "colonize" any portion of Central America; and yet more than a year after its ratification, the colony of the Bay Islands was established by an act of the British Government. The United States have always considered that proceeding a violation of the treaty, even with the British construction of it; and the claim for its justification that the Bay Islands are dependencies of the Belize settlement cannot, it is believed, be maintained with success upon either American or British authority. It is directly at variance with the description given by Sir Charles Grey, the secretary of state for the colonies, in 1836, of the boundaries of the Belize settlement; and, from the discussions between the two governments which took place in London in 1854, it cannot be doubted that it was opposed also to the deliberate opinion of Lord Aberdeen, then at the head of the British cabinet.

Independently, however, of these considerations, there is another view of the subject which interposes insuperable obstacles to the desired action of the United States upon this treaty. The character or the extent of the concessions which England may demand of Honduras is nowhere defined in that instrument. Any grant, however inconsistent with the independence or the rights of that republic, if not inconsistent with the express provisions of the treaty, may be demanded by Great Britain, and, if rejected, what then will be the condition of the parties? Great Britain would retain the possession of these islands, with the implied concurrence of the United States, and this valuable group, overlooking one of the great avenues of communication of the world, and in the freedom and security of which the United States have a far deeper interest than any other nation, might thus eventually become a permanent portion of the British Empire. That the United States should decline to make themselves a party to such an arrangement can surely occasion neither surprise nor disappointment to the people or statesmen of Great Britain.

I am, therefore, directed by the President to announce to your lordship that he cannot accept the *projet* of a treaty which, agreeably to your instructions, you have presented for his consideration. But, while feeling it his duty so to decide, he fully reciprocates the desire of your government to cement the amicable relations of the two countries, and, during his administration, no effort shall be wanting on his part to prevent any interruption of that friendly intercourse which both Great Britain and the United States have so many powerful motives to promote.

I have, &c.,

LEWIS CASS.

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46.—*Lord Napier to Lord Clarendon.*

[Extract.]

No. 19.] WASHINGTON, *June 22, 1857.* (Received July 7.)

It is probable that if the pending discussions regarding Central America be not closed during the present summer, an attempt will be made in the next session of Congress to set aside the Clayton-Bulwer treaty. My impression to this effect is constantly deepened by reflection and by the information which reaches me from several quarters.

There can be no doubt of the views of the President and Cabinet in this matter.

NAPIER.

The EARL OF CLARENDON.

47.—*Lord Napier to Lord Clarendon.*

[Extract.]

WASHINGTON, *October 12, 1857.* (Received October 30.)

MY LORD: I am now assured that the American Cabinet will shortly receive Mr. Yrissari in the quality of minister from Nicaragua, and that a treaty will be negotiated with him for the protection of the interoceanic passage by the River San Juan, similar to that contracted between Great Britain and Honduras for the guarantee of the railway projected across the territory of the latter state.

At the same time the Government of Nicaragua have recognized the existence of the old "American Atlantic and Pacific Ship Canal Company," which appeared to have lapsed during the operations of the "Accessory Transit Company," of filibustering notoriety. The original charter of the former association has been modified under the deliberations of the Nicaraguan minister and Mr. Joseph White, the legal adviser of that body. The company is under the nominal presidency of Mr. Stevens, of New York, and is said to comprise some persons of credit and substantial resources, but Mr. White is the active agent in the enterprise. If not officially recognized, his project is viewed with favor by the American Cabinet, and I think it may very probably be carried into operation.

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NAPIER.

48.—*General Cass to Lord Napier.*

WASHINGTON, *October 20, 1857.*

MY LORD: I have had the honor to receive your lordship's communication of the 9th instant, in reference to the existing relations between Nicaragua and Costa Rica, and have submitted it to the consideration of the President.

These relations have attracted the earnest attention of the President, not only from the importance of the San Juan transit to the commerce of the world, but from the interest which is naturally felt by the United States in the neighboring republics of this continent. The President

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has witnessed, therefore, the restoration of peace to Nicaragua and Costa Rica with the highest gratification; and he sincerely hopes that it may not again be interrupted either by the calamity of civil war or the invasion of their territory from other countries. Their security and welfare would undoubtedly be promoted by a just and friendly settlement between them of their mutual boundaries and jurisdiction; and I need hardly add that such an adjustment would be viewed with satisfaction by the United States. This government, however, has never admitted the pretensions of Costa Rica to an equal control with Nicaragua of the San Juan River, but has regarded the sovereignty of the river, and consequently of the interoceanic transit by that route, as rightfully belonging to the Republic of Nicaragua.

A similar view of the question appears to have been recognized by Great Britain, and, whatever may be the rights of Costa Rica with respect to the free passage of her own products by the river to the ocean, it is better, probably, that what has been thus acquiesced in, and has led moreover to important contracts and responsibilities, should not now be disturbed. But under any circumstances the commercial nations of the world can never permit the interoceanic passages of the isthmus to be rendered useless for all the great purposes which belong to them in consequence of the neglect or incapacity of the states through whose territories they happen to run. The United States, as I have before had occasion to assure your lordship, demand no exclusive privileges in these passages, but will always exert their influence to secure their free and unrestricted benefits, both in peace and war, to the commerce of the world. The rumored invasion of Central America, which your lordship apprehends may delay the re-establishment of the transit service through Nicaragua, has not escaped the attention of the President, and his views on the subject are clearly indicated in the circular from this Department of the 18th ultimo, which has been printed in the public journals, and has not escaped your lordship's notice.

No nation on earth, it is believed, appreciates its national rights and duties more highly than the United States, and no one is more ready to concede to other nations, whether strong or weak, that measure of justice which it claims for itself. Any such expedition as that which has been mentioned is forbidden, under severe penalties, by the laws of this country, and these laws the President will take care, on all proper occasions, to enforce.

I have thus endeavored to meet the frank suggestions of your lordship by restating, with corresponding frankness, the general policy of the United States with respect to the governments and the interoceanic transits of Central America; but since your lordship has referred to the Clayton-Bulwer treaty of 1850 as contemplating a "harmonious course of action and counsel between the contracting parties in the settlement of the Central American interests," you will pardon me for reminding your lordship that the differences which this treaty was intended to adjust between the United States and Great Britain still remain unsettled, while the treaty itself has became the subject of new and embarrassing complications.

Until these disagreements can be removed, and the states of Central America can be left to that independent control of their own affairs, with which the continued claims of Great Britain in that quarter seem to this government quite inconsistent, it is easy to see that the harmony of action and counsel between this government and that of Her Britannic Majesty, to which your lordship refers, must be always attended with difficulty, if not found impossible.

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It was hoped that these differences would be removed by the approval, on the part of Great Britain, of the amended treaty of October 17, 1856, which had been sanctioned by the President in a spirit of amity towards that kingdom, although its provisions were not wholly in accordance with his views. But the British Government found it necessary to withhold their approval, and the treaty was returned from London unratified.

It was impossible for this government to consent to the treaty in its original form, for reasons which your lordship well understands, and no further discussion has been had on the subject between the two governments.

The President still entertains an earnest hope that all subjects of disagreement which now exist between the United States and Great Britain may be harmoniously adjusted at an early day, but he can not be insensible to the long delay which has attended their negotiations on the subject of Central America, or to the serious difficulties which the continuance of this delay is calculated to produce.

I avail, &c.,

LEWIS CASS.

49.—*Lord Napier to Lord Clarendon.*

[Extract.]

No. 26.] WASHINGTON, *October 22, 1857.* (Received November 9.)

On receiving an intimation from your lordship that Her Majesty's Government had determined to send out a special minister to Central America, with a view of adjusting the questions under discussion in that quarter, I sought an interview with the President for the purpose of communicating this intelligence to his Excellency.

The President received me on the afternoon of the 19th instant, and I was enabled to report to your lordship by the mail of the same day, in a private form, the substance of a conversation which I have now the honor to submit to your lordship with more accuracy and extension.

I stated to the President that, since the failure of the late overtures consequent on the non-ratification of the treaty of 1856, Her Majesty's Government had considered the several alternatives of action which were open to their selection, and on a review of the whole case, had resolved to dispatch a representative of authority and experience to Central America, charged to make a definite settlement of all the matters with regard to which the United States and England were still at variance.

This conclusion had been embraced for some time past, and the delay which had occurred was referable partly to the difficulty of selecting a competent person for a duty which involved much personal inconvenience, and demanded peculiar qualifications, and partly to the nature of the intelligence from India, which had of late absorbed the attention of the English cabinet.

Her Majesty's Government had, however, now appointed Sir William Gore Ouseley for the service alluded to, and felt the greater satisfaction in doing so because he was intimately known to the President and enjoyed his good opinion.

I could not state exactly the character of the instructions with which

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Sir William Ouseley would be charged, but I might infer from all that had reached me that they would virtually be to the following effect:

The efforts of the new plenipotentiary would be directed to those objects which had been dealt with in the treaty of 1856, now laid aside, viz, the cession of the Bay Islands to Honduras, the substitution of the sovereignty of Nicaragua for the protectorate of England in Mosquito, and the regulation of the frontiers of Belize.

In short, I believed it was the intention of Her Majesty's Government to carry the Clayton-Bulwer treaty into execution according to the general tenor of the interpretation put upon it by the United States, but to do so by separate negotiation with the Central American Republics, in lieu of a direct engagement with the Federal Government.

The President commenced his observations by referring to the Clayton-Bulwer treaty as a fruitful source of misunderstanding between the contracting parties. Without that treaty the United States and Great Britain might long since have co-operated for the welfare of Central America. That treaty had never been acceptable to the people of the United States, and would not have obtained a vote in the Senate, had the least suspicion existed of the sense in which it was to be construed by Great Britain; yet if it were now the intention of Her Majesty's Government to execute it according to the American interpretation, that was as much as he could insist upon.

In any arrangement entered into with this purpose, he must, however, remark that the Government of the United States could not recognize as satisfactory the cession of the Bay Islands to Honduras, with stipulations similar to those contained in the treaty lately negotiated between England and that republic, which left the Bay Islands as much under the protection of Great Britain as Mosquito. He did not know what had become of that treaty.

I replied that I felt convinced it had been the intention of Her Majesty's Government to deliver the islands to Honduras in full sovereignty, and that the franchises awarded to them by the treaty were designed for the freedom of trade, the protection of the vested interests of British subjects, and the welfare of the inhabitants.

I added that his excellency was well aware of the convictions conscientiously held in England respecting slavery, and of the respect which Her Majesty's Government owed to public feeling on that subject. I might plainly affirm that a principal motive in framing securities for the after government of the Bay Islands had been the apprehension that, when relinquished by the English authorities, those islands would be settled by planters from the United States, who would bring their negroes with them, and thus establish slavery on soil which had, justly or unjustly, been declared to be a colonial dependency of Great Britain.

Her Majesty's Government, moreover, regarded the Bay Islands as forming, in a manner, one of the termini of the Honduras transit route, and therefore desired to see them endowed with the privileges of a free port, the Island of Tigre, in the Gulf of Fonsega, at the other extremity, having long possessed those immunities.

The President contended that the stipulations were uncalled for and that Her Majesty's Government might have surrendered the islands freely, and subsequently enforced on the Government of Honduras a due respect to the claims of British settlers.

In reply to his excellency, I allowed that the articles establishing the administrative independence of the islands might have been larger than was necessary. I had observed the same impression in the corre-

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spondence of Mr. Wyke, Her Majesty's chargé d'affaires at Guatemala, who seemed to admit that a greater participation in the internal government might be granted to the authorities of Honduras; that I made no doubt Her Majesty's Government would entertain any reasonable suggestions which might be afforded to them in that sense. As far as I knew the discussion was not closed, and Sir William Ouseley would, probably, have power to enter upon it in a liberal spirit.

I then went on to animadvert upon the danger of some movement in the approaching Congress which would interfere with the contemporary negotiation of Sir William Ouseley, remarking that should the President in his message allude to the position of the two countries in reference to Central America, and if, in consequence of his excellency's reflections a resolution should be proposed for the abrogation of the Clayton-Bulwer treaty, such a step would not only frustrate the purposes of Sir William Ouseley's mission, but would have a calamitous influence on the future relations of England and America. It would, therefore, be highly gratifying to me to be enabled to assure your lordship that, pending the negotiation intrusted to Sir William Ouseley, no proposal to annul the treaty would be sanctioned or encouraged by his excellency or by the members of his government.

The President stated, in reply, that it was certainly his intention to give an account in his message of all that had passed between the two governments respecting the Dallas-Clarendon treaty. He appeared to intimate that the effect of such a narrative would be to place the conduct of Great Britain in an unfavorable light, and he added that the passage in which he commented upon these transactions was already prepared; but his excellency went on to affirm, with emphasis, that if the resolutions of Her Majesty's Government were such as I had related, if they really meant to execute the Clayton-Bulwer treaty according to the American interpretation, and would, before the meeting of Congress, make some communication to him in that sense, such as he could use, he would cancel what he had written and insert another passage referring to the mission of Sir William Ouseley, and that "nothing would give him greater pleasure than to add the expression of his sincere and ardent wish for the maintenance of friendly relations between the two countries."

His excellency also distinctly declared that, under the circumstances here described, no attempt against the Clayton-Bulwer treaty in Congress would have any countenance from him whatever. To him it was indifferent whether the concessions contemplated by Her Majesty's Government were consigned to a direct engagement between England and the United States, or to treaties between the former and the Central American republics. The latter method might, in some respects, be even more agreeable to him, and he thought it would be more convenient to Her Majesty's Government, who might, with greater facility, accede to the claims of the weaker party.

I thanked the President for his assurances, and expressed my hope that your lordship would be enabled to make a full communication of Sir William Ouseley's instructions to the American Cabinet, and even to direct that minister to visit Washington, on his way to Central America, if his excellency thought such a step would be advisable. The President replied that a written communication would be sufficient, even if it reached him a few days before the meeting of Congress.

In the course of this interview the President touched incidentally upon the Honduras Railway, which he trusted might prove a successful enterprise, although the impressions which reached him were un-

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favorable to its practicability, or, at least, to its profitable execution. In this sentiment I concurred with the President, and avowed my apprehension that the undertaking would be the grave of a vast amount of British capital, which had been already so extensively wasted on the American continents.

Allusion having been made to the relations of Costa Rica and Nicaragua, the President asserted that the United States aimed at no exclusive privileges and at no possession in that region; their interests and those of Great Britain were identical. I answered that such had always been my persuasion and my language, and that the parties who had obtained concessions from Costa Rica for the transit or the navigation of the River San Juan, acted, in my belief, without any sanction or authority from Her Majesty's Government. The jurisdiction of the transit was vested in Nicaragua; but Her Majesty's Government, I thought, would desire to secure the beneficial use of the river to Costa Rica for the purposes of import and export trade—a claim which seemed equitable and consistent with the views of the United States with reference to the navigation of the Amazon.

I have the pleasure of reporting to your lordship that the President took occasion to declare his satisfaction in the sympathy which had been displayed throughout the United States towards England since the outbreak of the Indian mutiny, and his own confidence in the success of Her Majesty's arms, which was to be desired in the interest of the natives of Hindostan.

At the conclusion of the interview, as I rose to take my leave, the President resumed the subject and said:

> I shall be satisfied on condition that the British Government sends a minister to Central America, instructed to settle all the questions which have been controverted between the two governments according to the American construction of the treaty, and upon receiving an official assurance to this effect I shall change the character of my message.

In affirming the present policy of Her Majesty's Government to be "the execution of the Clayton-Bulwer treaty according to the general tenor of the interpretation placed upon it by the United States," I trust that I have not misconstrued the views of Her Majesty's Government in the mission of Sir William Ouseley.

I am careful in my language on this subject to mark that I spoke on a broad impression of your lordship's intentions, and not on a particular official knowledge of the decision of Her Majesty's Government.

I need not add that the engagements of the President do not depend in any degree on what I have hazarded on my own responsibility, but are altogether contingent on the the nature of the communication which his excellency may receive before the 4th of next December, when Congress will assemble.

NAPIER.

The EARL OF CLARENDON.

50.—*Cass-Yrisarri treaty, November 16, 1857.*

The Republic of Nicaragua and the United States of America, being desirous to maintain with each other the most friendly relations, to promote the commercial intercourse of their respective citizens, and to make some mutual arrangement with respect to a communication between the Atlantic and Pacific Oceans by the river San Juan de Nicaragua and either or both the lakes of Nicaragua and Managua, or by any other

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route through the territories of said Republic of Nicaragua, have deemed it expedient to conclude a treaty of friendship, commerce and navigation, and for this purpose have named the following plenipotentiaries, that is to say:

The Republic of Nicaragua, Antonio José de Yrisarri, her envoy extraordinary and minister plenipotentiary in the United States of America;

And the President of the United States of America, Lewis Cass, Secretary of State of the United States: who, after having communicated to each other their full powers, found to be in due and proper form, have agreed upon and concluded the following articles:

ARTICLE I.

There shall be perpetual amity between the United States and their citizens, on the one part, and the Government of the Republic of Nicaragua and its citizens on the other.

ARTICLE II.

There shall be, between all the territories of the United States and the territories of the Republic of Nicaragua, a reciprocal freedom of commerce. The subjects and citizens of the two countries, respectively, shall have full liberty, freely and securely, to come, with their ships and cargoes, to all places, ports, and rivers, in the territories aforesaid, to which other foreigners are, or may be, permitted to come, to enter into the same, and to remain and reside in any part thereof, respectively; also, to hire and occupy houses and warehouses for the purposes of their commerce; and generally the merchants and traders of each nation, respectively, shall enjoy the most complete protection and security for their commerce, subject always to the laws and statutes of the two countries, respectively.

In like manner the respective ships of war and post-office packets of the two countries shall have liberty, freely and securely, to come to all harbors, rivers, and places to which other foreign ships of war and packets are, or may be, permitted to come, to enter the same, to anchor, and to remain there and refit, subject always to the laws and statutes of the two countries, respectively.

By the right of entering places, ports, and rivers, mentioned in this article, the privilege of carrying on the coasting trade is not understood, in which trade national vessels only of the country where the trade is carried on are permitted to engage.

ARTICLE III.

It being the intention of the two high contracting parties to bind themselves, by the preceding articles, to treat each other on the footing of the most favored nation, it is hereby agreed between them that any favor, privilege, or immunity whatever, in matters of commerce and navigation, which either contracting party has actually granted, or may grant hereafter, to the subjects or citizens of any other State, shall be extended to the subjects of the other contracting party gratuitously, if the concession in favor of that other nation shall have been gratuitous, or in return for a compensation, as nearly as possible, of proportionate value and effect, to be adjusted by mutual agreement if the concession shall have been conditional.

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ARTICLE IV.

No higher nor other duties shall be imposed on the importation into the territories of the United States of any article being the growth, produce, or manufacture of the Republic of Nicaragua, and no higher or other duties shall be imposed on the importation into the territories of the Republic of Nicaragua of any articles being the growth, produce, or manufacture of the territories of the United States than are, or shall be, payable upon the like articles being the growth, produce, or manufacture of any other foreign country; nor shall any other or higher duties or charges be imposed in the territories of either of the high contracting parties on the exportation of any articles to the territories of the other than such as are, or may be, payable on the exportation of the like articles to any other foreign country; nor shall any prohibition be imposed upon the exportation or importation of any articles the growth, produce, or manufacture of the territories of the United States or the Republic of Nicaragua, to or from the said territories of the United States, or to or from the Republic of Nicaragua, which shall not equally extend to all other nations.

ARTICLE V.

No higher nor other duties or payments, on account of tonnage, of light or harbor dues, or pilotage, of salvage in case of either damage or shipwreck, or on account of any local charges, shall be imposed in any of the ports of Nicaragua on vessels of the United States than those payable by Nicaraguan vessels; nor in any of the ports of the United States on Nicaraguan vessels than shall be payable in the same ports on vessels of the United States.

ARTICLE VI.

The same duties shall be paid on the importation into the territories of the Republic of Nicaragua of any article being the growth, produce and manufacture of the territories of the United States, whether such importations shall be made in Nicaraguan vessels or in vessels of the United States; and the same duties shall be paid on the importation into the territories of the United States of any article being the growth, produce, or manufacture of the Republic of Nicaragua, whether such importation shall be made in United States or Nicaraguan vessels.

The same dues shall be paid and the bounties and drawbacks allowed on the exportation to the Republic of Nicaragua of any articles being the growth, produce, or manufacture of the territories of the United States, whether such exportations shall be made in Nicaraguan or United States vessels; and the same duties shall be paid and the same bounties and drawbacks allowed on the exportation of any article being the growth, produce, or manufacture of the Republic of Nicaragua to the territories of the United States, whether such exportation shall be made in the vessels of the United States or of Nicaragua.

ARTICLE VII.

All merchants, commanders of ships, and others, citizens of the United States, shall have full liberty in all the territories of the Republic of Nicaragua to manage their own affairs themselves, as permitted by the

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laws, or to commit them to the management of whomsoever they please, as broker, factor agent, or interpreter; nor shall they be obliged to employ any other persons in those capacities than those employed by Nicaraguans, nor to pay them any other salary or remuneration than such as is paid in like cases by Nicaraguan citizens; and absolute freedom shall be allowed in all cases to the buyer and seller to bargain and fix the price of any goods, wares, or merchandise imported into, or exported from, the Republic of Nicaragua, as they shall see good, observing the laws and established customs of the country.

The same privileges shall be enjoyed in the territories of the United States by the citizens of the Republic of Nicaragua under the same conditions.

The citizens of the high contracting parties shall reciprocally receive and enjoy full and perfect protection for their persons and property, and shall have free and open access to the courts of justice in said countries, respectively, for the prosecution and defense of their just rights; and they shall be at liberty to employ, in all cases, the advocates, attorneys, or agents, of whatever description, whom they may think proper; and they shall enjoy, in this respect, the same rights and privileges therein as native citizens.

ARTICLE VIII.

In whatever relates to the police of the ports, the lading and unlading of ships, the safety of the merchandise, goods, and effects; the succession to personal estates, by will or otherwise; and the disposal of personal property of every sort and denomination, by sale, donation, exchange, testament, or any other manner whatsoever, as also the administration of justice, the citizens of the two high contracting parties shall reciprocally enjoy the same privileges, liberties, and rights as native citizens; and they shall not be charged, in any of these respects, with any higher imposts or duties than those which are, or may be, paid by native citizens, submitting, of course, to the local laws and regulations of each country, respectively.

The foregoing provisions shall be applicable to real estate situated within the States of the American Union or within the Republic of Nicaragua, in which foreigners shall be entitled to hold or inherit real estate.

But in case real estate situated within the territories of one of the contracting parties should fall to a citizen of the other party, who, on account of his being an alien, could not be permitted to hold such property in the state in which it may be situated, there shall be accorded to the said heir, or other successor, such term as the laws of the state will permit to sell such property; he shall be at liberty at all times to withdraw and export the proceeds thereof without difficulty, and without paying to the government any other charges than those which, in a similar case, would be paid by an inhabitant of the country in which the real estate may be situated.

If any citizen of either of the two high contracting parties shall die without a will or testament in any of the territories of the other, the minister or consul or other diplomatic agent of the nation to which the deceased belonged (or the representative of such minister or consul or other diplomatic agent, in case of absence), shall have the right to nominate curators to take charge of the property of the deceased, so far as the laws of the country will permit, for the benefit of the lawful heirs and creditors of the deceased, giving proper notice of such nomination to the authorities of the country.

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ARTICLE IX.

1. The citizens of the United states residing in Nicaragua, or the citizens of Nicaragua residing in the United States, may intermarry with the natives of the country, hold and possess, by purchase, marriage, or descent, any estate, real or personal, without thereby changing their national character, subject to the laws which now exist or may be enacted in this respect.

2. The citizens of the United States residents in the Republic of Nicaragua, and the citizens of Nicaragua residents in the United States, shall be exempted from all forced (or compulsory) military service whatsoever, by land or sea; from all contributions of war, military exactions, forced loans in time of war; but they shall be obliged in the same manner as the citizens of each nation to pay lawful taxes, municipal and other modes of imposts and ordinary charges, loans, and contributions in time of peace (as the citizens of the country are liable), in just proportion to the property owned.

3. Nor shall the property of either, of any kind, be taken for any public object, without full and just compensation to be paid in advance; and,

4. The citizens of each of the two high contracting parties shall have the unlimited right to go to any part of the territories of the other, and in all cases enjoy the same security as the natives of the country where they reside, with the condition that they duly observe the laws and ordinances.

ARTICLE X.

It shall be free for each of the two high contracting parties to appoint consuls for the protection of trade, to reside in any of the territories of the other party.

But before any consul shall act as such, he shall, in the usual form, be approved and admitted by the government to which he is sent, and either of the high contracting parties may except from the residence of consuls such particular places as they judge fit to be excepted.

The diplomatic agents of Nicaragua and consuls shall enjoy in the territories of the United States whatever privileges, exemptions, and immunities whatever as are, or shall be, allowed to the agents of the same rank belonging to the most favored nations; and, in like manner, the diplomatic agents and consuls of the United States in Nicaragua, shall enjoy, according to the strictest reciprocity, whatever privileges, exemptions, and immunities that are, or may be, granted in the Republic of Nicaragua to the diplomatic agents and consuls of the most favored nations.

ARTICLE XI.

For the better security of commerce between the citizens of the United States and the citizens of Nicaragua it is agreed that if at any time any interruption of friendly intercourse or any rupture should unfortunately take place between the two high contracting parties, the citizens of either, who may be within the territories of the other, shall, if residing on the coast, be allowed six months, and if in the interior, a whole year, to wind up their accounts and dispose of their property; and a safe conduct shall be given to them to embark at any port they themselves may select. Even in case of a rupture all such citizens of either of the high contracting parties, who are established in any of the territories of the other in trade or other employment, shall have the privilege of remain-

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ing and of continuing such trade or employment without any manner of interruption, in the full enjoyment of liberty and property, so long as they behave peacefully and commit no offense against the laws, and their goods and effects, of whatever description they may be, whether in their own custody or intrusted to individuals, or to the state, shall not be liable to seizure or sequestration nor to any other charges or demands than those which may be made upon the like effects or property belonging to the native citizens of the country in which such citizens may reside. In the same case, debts between individuals, property out in public funds, and shares of companies, shall never be confiscated nor detained.

ARTICLE XII.

The citizens of the United States and the citizens of the Republic of Nicaragua, respectively, residing in any of the territories of the other party shall enjoy in their houses, persons, and property the protection of the government, and shall continue in possession of the guarantees which they now enjoy. They shall not be disturbed, molested, or annoyed in any manner on account of their religious belief, nor in the proper exercise of their religion, agreeably to the system of tolerance established in the territories of the high contracting parties, provided they respect the religion of the nation in which they reside, as well as the constitution, laws, and customs of the country.

Liberty shall be also granted to bury the citizens of either of the two high contracting parties who may die in the territories aforesaid, in burial places of their own, which, in the same manner, may be freely established and maintained; nor shall the funerals or sephulchres of the dead be disturbed in any way or upon any account.

ARTICLE XIII.

Whenever the citizens of either of the contracting parties shall be forced to seek refuge or asylum in the rivers, bays, ports, or dominions of the other, with their vessels, whether merchant or war, public or private, through stress of weather, pursuit of pirates or enemies, or want of provisions or water, they shall be received and treated with humanity and given all favor and protection for repairing their vessels, procuring provisions and placing themselves in all respects in a condition to continue their voyage without obstacle or hinderance of any kind.

ARTICLE XIV.

The Republic of Nicaragua hereby grants to the United States, and to their citizens and property, the right of transit between the Atlantic and Pacific Oceans through the territories of that republic on any route of communication, natural or artificial, whether by land or water, which may now or hereafter exist or be constructed under the authority of Nicaragua, to be used and enjoyed, in the same manner and upon equal terms by both republics and their respective citizens, the Republic of Nicaragua, however, reserving its right of sovereignty over the same.

ARTICLE XV.

The United States hereby agree to extend their protection to all such routes of communication as aforesaid, and to guarantee the neutrality

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of the same. They also agree to employ their influence with other nations to induce them to guarantee such neutrality and protection.

And the Republic of Nicaragua on its part undertakes to establish two free ports, one at each of the extremities of the communications aforesaid on the Atlantic and Pacific Oceans. At these ports no tonnage or other duties shall be imposed or levied by the Government of Nicaragua on the vessels of the United States, or on any effects or merchandise belonging to citizens or subjects of the United States, or upon the vessels or effects of any other country intended *bona fide* for transit across the said routes of communication and not for consumption, within the Republic of Nicaragua.

The United States shall also be at liberty to carry troops and munitions of war in their own vessels or otherwise to either of the said free ports, and shall be entitled to their conveyance between them without obstruction by the authorities of Nicaragua, and without any charges or tolls whatever for their transportation on either of said routes of communication. And no higher or other charges or tolls shall be imposed on the conveyance or transit of persons or property of citizens or subjects of the United States or of any other country across the said routes of communication than are or may be imposed on the persons and property of citizens of Nicaragua. And the Republic of Nicaragua recognizes the right of the Postmaster-General of the United States to enter into contracts with any individuals or companies to transport the mails of the United States along the said routes of communication, or along any other routes across the isthmus, in its discretion, in closed bags, the contents of which may not be intended for distribution within the said republic, free from the imposition of all taxes or duties by the Government of Nicaragua; but this liberty is not to be construed so as to permit such individuals or companies, by virtue of this right to transport the mails, to carry also passengers or freight.

ARTICLE XVI.

The Republic of Nicaragua agrees that, should it become necessary at any time to employ military force for the security and protection of persons and property passing over any of the routes aforesaid, it will employ the requisite force for that purpose; but, upon failure to do this for any cause whatever, the Government of the United States may, after notice to the Government of Nicaragua, or to the minister thereof in the United States, employ such force, for this and for no other purpose; and when the necessity ceases, such force shall be immediately withdrawn.

ARTICLE XVII.

It is understood, however, that the United States, in according protection to such routes of communication, and guaranteeing their neutrality and security, always intend that the protection and guarantee are granted conditionally, and may be withdrawn if the United States should deem that the persons or company undertaking or managing the same adopt or establish such regulations concerning the traffic thereupon as are contrary to the spirit and intention of this treaty, either by making unfair discriminations in favor of the commerce of any nation or nations over the commerce of any other nation or nations, or by imposing oppressive exactions or unreasonable tolls upon mails, passengers, vessels, goods, wares, merchandise, or other articles.

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The aforesaid protection and guarantee shall not, however, be withdrawn by the United States without first giving six months' notice to the Republic of Nicaragua.

ARTICLE XVIII.

And it is further understood and agreed that in any grants or contracts which may hereafter be made or entered into by the Government of Nicaragua having reference to the interoceanic routes above referred to, or either of them, the rights and privileges granted by this convention to the Government and citizens of the United States shall be fully protected and reserved. And if any such grants or contracts now exist of a valid character, it is further understood that the guarantee and protection of the United States stipulated in Article XV of this treaty shall be held inoperative and void until the holders of such grants or contracts shall recognize the concessions made in this treaty to the Government and citizens of the United States with respect to such interoceanic routes, or either of them, and shall agree to observe and be governed by those concessions as fully as if they had been embraced in their original grants or contracts; after which recognition and agreement, said guarantee and protection shall be in full force; provided that nothing herein contained shall be construed either to affirm or deny the validity of any of the said contracts.

ARTICLE XIX.

After ten years from the completion of a railroad or any other route of communication through the territory of Nicaragua, from the Atlantic to the Pacific Ocean, no company which may have constructed or be in possession of the same shall ever divide, directly or indirectly, by the issue of new stock, the payment of dividends, or otherwise, more than fifteen per cent. per annum, or at that rate, to its stockholders from tolls collected thereupon; but whenever the tolls shall be found to yield a larger profit than this, they shall be reduced to the standard of fifteen per cent. per annum.

ARTICLE XX.

It is understood that nothing contained in this treaty shall be construed to affect the claim of the government and citizens of the Republic of Costa Rica to a free passage by the San Juan River for their persons and property to and from the ocean.

ARTICLE XXI.

The two high contracting parties, desiring to make this treaty as durable as possible, agree that this treaty shall remain in full force for the term of twenty years from the day of the exchange of the ratifications; and either party shall have the right to notify the other of its intention to terminate, alter, or reform this treaty, at least twelve months before the expiration of the twenty years; if no such notice be given, then this treaty shall continue binding beyond the said time, and until twelve months shall have elapsed from the day on which one of the parties shall notify the other of its intention to alter, reform, or abrogate this treaty.

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ARTICLE XXII.

The present treaty shall be ratified, and the ratifications exchanged, at Washington City, within the space of nine months, or sooner, if possible.

In witness whereof the respective plenipotentiaries have signed the same, and affixed thereto their respective seals.

Done at the city of Washington, this sixteenth of November, in the year of our Lord one thousand eight hundred fifty-seven.

LEWIS CASS.
A. J. DE YRISARRI.

51.—*Lord Napier to General Cass.*

[Extract.]

WASHINGTON, *November 30, 1857.*

SIR: * * * * *

2. In framing stipulations for the compensation, the government, and the preservation of the Mosquito Indians under the sovereignty of Nicaragua, Sir William Ouseley will be guided by the provisions of the treaty of 1856, which, although it did not acquire the validity of an international engagement, may on this point be held to express the policy and opinions of the contracting parties. The limits of the territorial reserve may be subject to modification, but the boundaries proposed to Nicaragua and Honduras will certainly not be less favorable than those indicated by the treaty alluded to; they will in no degree trespass on the territory applicable to transit purposes, and in the settlement of details Her Majesty's envoy will grant an indulgent consideration to the wishes and necessities of the Central American governments when they are compatible with the safety and the welfare of those native tribes which have previously enjoyed the protection of the British crown.

3. The regulation of the frontier of British Honduras will be effected by negotiation with the Government of Guatemala. Her Majesty's Government trusts to obtain from this republic a recognition of limits, which, if we may judge from previous communication on this subject, may be accepted in a spirit of conciliation if not with absolute approval by the President.

Such is, in outline, the basis of the negotiation committed to Sir William Ouseley, as far as regards the construction and execution of the provisions of the Clayton-Bulwer treaty. The interpretation of that instrument thus practically sanctioned by Her Majesty's Government may not strictly coincide with that which is adopted, no doubt in perfect sincerity, by the United States; but the present resolution of Her Majesty's Government involves no slight relaxations of the sense in which, in equal good faith, the engagements of 1850 were contracted by Great Britain. It is hoped that the concessions of Her Majesty's Government will be met in a similar temper by the Government of the United States, that the mission of Sir William Ouseley will be regarded with benevolence, and that, if successfully accomplished, its results will be embraced as an honorable compromise of contending opinions, and as a definitive settlement of those disputed points which have so long attracted the anxious attention of our respective governments.

* * * * * * *

NAPIER.

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52.—President Buchanan's message to Congress, December 8, 1857.

[Extract.]

The diplomatic difficulties which existed between the Government of the United States and that of Great Britain at the adjournment of the last Congress, have been happily terminated by the appointment of a British minister to this country, who has been cordially received.

Whilst it is greatly to the interest, as I am convinced it is the sincere desire, of the governments and people of the two countries to be on terms of intimate friendship with each other, it has been our misfortune almost always to have had some irritating, if not dangerous, outstanding question with Great Britain.

Since the origin of the government we have been employed in negotiating treaties with that power, and afterwards in discussing their true intent and meaning. In this respect the convention of April 19, 1850, commonly called the Clayton and Bulwer treaty, has been the most unfortunate of all; because the two governments place directly opposite and contradictory constructions upon its first and most important article. Whilst in the United States, we believed that this treaty would place both powers upon an exact equality by the stipulation that neither will ever "occupy, or fortify, or colonize, or assume or exercise any dominion" over any part of Central America, it is contended by the British Government that the true construction of this language has left them in the rightful possession of all that portion of Central America which was in their occupancy at the date of the treaty; in fact, that the treaty is a virtual recognition on the part of the United States of the right to Great Britain, either as owner or protector, to the whole extensive coast of Central America, sweeping round from the Rio Hondo to the port and harbor of San Juan de Nicaragua, together with the adjacent Bay Islands, except the comparatively small portion of this between the Sarstoon and Cape Honduras. According to their construction, the treaty does no more than simply prohibit them from extending their possessions in Central America beyond the present limits. It is not too much to assert, that if in the United States the treaty had been considered susceptible of such a construction, it never would have been negotiated under the authority of the President, nor would it have received the approbation of the Senate. The universal conviction in the United States was, that when our Government consented to violate its traditional and time-honored policy, and to stipulate with a foreign government never to occupy or acquire territory in the Central American portion of our continent, the consideration for this sacrifice was that Great Britain should, in this respect, at least, be placed in the same position with ourselves.

Whilst we have no right to doubt the sincerity of the British government in their construction of the treaty, it is at the same time my deliberate conviction that this construction is in opposition both to its letter and its spirit.

Under the late administration negotiations were instituted between the two governments for the purpose, if possible, of removing these difficulties; and a treaty having this laudable object in view was signed at London on the 17th October, 1856, and was submitted by the President to the Senate on the following 10th of December.

Whether this treaty, either in its original or amended form, would have accomplished the object intended without giving birth to new and embarrassing complications between the two governments, may perhaps

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be well questioned. Certain it is, however, it was rendered much less objectionable by the different amendments made to it by the Senate.

The treaty, as amended, was ratified by me on the 12th March, 1857, and was transmitted to London for ratification by the British Government. That government expressed its willingness to concur in all the amendments made by the Senate, with the single exception of the clause relating to Ruatan and the other islands in the Bay of Honduras. The article in the original treaty, as submitted to the Senate, after reciting that these islands and their inhabitants—

having been by a convention bearing date the 27th day of August, 1856, between Her Britannic Majesty and the Republic of Honduras, constituted and declared a free territory under the sovereignty of the said Republic of Honduras—

stipulated that—

the two contracting parties do hereby mutually engage to recognize and respect in all future time the independence and rights of the said free territory as a part of the Republic of Honduras.

Upon an examination of this convention between Great Britain and Honduras of the 27th August, 1856, it was found that, whilst declaring the Bay Islands to be "a free territory under the sovereignty of the Republic of Honduras," it deprived that republic of rights without which its sovereignty over them could scarcely be said to exist. It divided them from the remainder of Honduras, and gave to their inhabitants a separate government of their own, with legislative, executive, and judicial officers, elected by themselves. It deprived the government of Honduras of the taxing power in every form, and exempted the people of the islands from the performance of military duty, except for their own exclusive defense. It also prohibited that republic from erecting fortifications upon them for their protection, thus leaving them open to invasion from any quarter; and, finally, it provided "that slavery shall not at any time hereafter be permitted to exist therein."

Had Honduras ratified this convention, she would have ratified the establishment of a state substantially independent within her own limits, and a state at all times subject to British influence and control. Moreover, had the United States ratified the treaty with Great Britian in its original form, we should have been bound "to recognize and respect in all future time" these stipulations to the prejudice of Honduras. Being in direct opposition to the spirit and meaning of the Clayton and Bulwer treaty, as understood in the United States, the Senate rejected the entire clause, and substituted in its stead a simple recognition of the sovereign right of Honduras to these islands, in the following language:

The two contracting parties do hereby mutually engage to recognize and respect the islands of Ruatan, Bonaco, Utila, Barbaretta, Helena, and Morat, situate in the Bay of Honduras, and off the coast of the Republic of Honduras, as under the sovereignty and as part of the said Republic of Honduras.

Great Britain rejected this amendment, assigning as the only reason that the ratifications of the convention of the 27th August, 1856, between her and Honduras, had not been "exchanged, owing to the hesitation of that government." Had this been done, it is stated that "Her Majesty's Government would have had little difficulty in agreeing to the modification proposed by the Senate, which then would have had, in effect, the same signification as the original wording." Whether this would have been the effect; whether the mere circumstance of the exchange of the ratifications of the British convention with Honduras prior, in point of time, to the ratification of our treaty with Great Britain

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would "in effect" have had "the same signification as the original wording," and thus have nullified the amendment of the Senate, may well be doubted. It is, perhaps, fortunate that the question has never arisen.

The British Government, immediately after rejecting the treaty as amended, proposed to enter into a new treaty with the United States, similar in all respects to the treaty which they had just refused to ratify, if the United States would consent to add to the Senate's clear and unqualified recognition of the sovereignty of Honduras over the Bay Islands, the following conditional stipulation:

Whenever and so soon as the Republic of Honduras shall have concluded and ratified a treaty with Great Britain, by which Great Britain shall have ceded, and the Republic of Honduras shall have accepted the said islands, subject to the provisions and conditions contained in such treaty.

This proposition was, of course, rejected. After the Senate had refused to recognize the British convention with Honduras on the 27th August, 1856, with full knowledge of its contents, it was impossible for me, necessarily ignorant of "the provisions and conditions" which might be contained in a future convention between the same parties, to sanction them in advance.

The fact is, that when two nations like Great Britain and the United States, mutually desirous, as they are, and I trust ever may be, of maintaining the most friendly relations with each other, have unfortunately concluded a treaty which they understand in senses directly opposite, the wisest course is to abrogate such a treaty by mutual consent, and to commence anew. Had this been done promptly, all difficulties in Central America would most probably ere this have been adjusted to the satisfaction of both parties. The time spent in discussing the meaning of the Clayton and Bulwer treaty would have been devoted to this praiseworthy purpose, and the task would have been more easily accomplished because the interest of the two countries in Central America is identical, being confined to securing safe transits over all the routes across the Isthmus.

Whilst entertaining these sentiments, I shall nevertheless not refuse to contribute to any reasonable adjustment of the Central American questions which is not practically inconsistent with the American interpretation of the treaty. Overtures for this purpose have been recently made by the British Government in a friendly spirit, which I cordially reciprocate; but whether this renewed effort will result in success I am not yet prepared to express an opinion. A brief period will determine.

53.—*Lord Napier to General Cass.*

WASHINGTON, *February 15, 1858.*

SIR: On the 30th of November last I had the honor to convey to you, under the instructions of Her Majesty's Government, a proposal to submit the controverted points in the treaty of 1850, respecting Central American affairs, to the free arbitration of any European power which the Government of the United States should prefer to select for that office. In a separate note, under the same date, I imparted to the Government of the United States an outline of the instructions under which Sir William Gore Ouseley has been charged to proceed on a special mission to the Central American republics, with a view to the settle-

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ment, by direct negotiation with those states, of the questions which the correspondence of last year in London had failed to adjust. Something in the nature of an alternative was thus offered to the American cabinet. Should the expedient of arbitration be adopted, a great portion of Sir William Ouseley's duty would be transferred to other agencies. Should arbitration be declined it was hoped that the efforts of Her Majesty's envoy would result in a settlement agreeable to the United States, inasmuch as in essential points it would carry the treaty of 1850 into operation in a manner practically conformable to the American interpretation of that instruction.

The note which I had the honor of addressing to you, in reference to the mission of Sir W. Ouseley, has received the official sanction of the Earl of Clarendon, and may therefore be regarded as an authoritative exposition of the intentions of Her Majesty's Government. In that communication, however, I indicated that two obstacles had arisen which might possibly modify the resolutions of Her Majesty's Government: first, the cotemporary negotiation of a convention for the protection of the transit route between the Government of the United States and that of Nicaragua; and secondly, the invasion of the Nicaraguan territory by a band of adventurers, who were engaged in an attempt to subvert the lawful government recognized by Great Britain. The impediments to which I alluded do not now exist.

In the treaty contemplated between the United States and Nicaragua, Her Majesty's Government do not see any obstacle in the realization of their designs committed to the management of Sir William Ouseley, while the projects of Walker and his confederates have been arrested by the interposition of the United States Navy, and we may hope definitively extinguished by the reprobation expressed, and the measures adopted by the President of the United States.

Satisfied in respect to the relations between the Government of the United States and Nicaragua, and relieved of the apprehensions raised by the renewed disturbances of the peace of Central America, Her Majesty's Government are prepared, if necessary, to sanction the departure of Sir William Ouseley on his mission and the execution of his instructions in the most conciliatory spirit.

Her Majesty's Government have, however, received no reply to their proposal for arbitration, a measure which they still regard as embodying the most unexceptionable method for the settlement of existing difficulties.

In requesting to be informed of the definitive resolution of the United States Government on this point, I am enabled to add that, if their determination should be an adverse one, Her Majesty's Government would give a friendly consideration to any observations which you may be disposed to offer on the objects of the mission intrusted to Sir William Ouseley.

I have, &c.,

NAPIER.

54.—*Lord Napier to Lord Malmesbury.*

No. 56.] WASHINGTON, *March 22, 1858.* (Received April 5.)

MY LORD: The overtures made by Her Majesty's late cabinet to the Government of the United States for the adjustment of pending controversies in Central America are known to your lordship from the cor-

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respondence between the foreign office and Her Majesty's legation on this subject.

Those proposals comprise an alternative submitted to the selection of the American Government. Her Majesty's Government have offered to refer all the controverted points in the treaty of 1850 to the free arbitration of any European power, or, if more agreeable to the United States, they design to adjust the matters under discussion by negotiation with the Isthmus republics, to which, through the medium of Sir William Ouseley's mission, they are prepared to make such concessions as would carry the treaty of 1850 into operation in the most important particulars, according to the construction placed upon that instrument by the cabinet of Washington.

These modes of settlement both involve the maintenance of the Clayton-Bulwer treaty in its essential principle, viz, the neutrality of the Central American region, the exclusion of the contracting parties from territorial acquisition in a country which, from its configuration and position, possesses a common and momentous interest to the maritime powers.

The conciliatory inclinations of Her Majesty's Government have, however, not stopped here. Prompted by an impression, derived from many sources, that the obligations of the Clayton-Bulwer treaty were repugnant to the people of the United States, and influenced, no doubt, by the declaration of the President in his late message to Congress, in which he intimates a desire for the amicable dissolution of that convention, the Earl of Clarendon authorized me to imform General Cass that Her Majesty's Government would not decline the consideration of a proposal for the abrogation of the treaty by mutual concert. An official character was not given to this communication, because the recent overtures of Her Majesty's Government are still under the consideration of the President, and because it seems most natural that the proposal for the repeal of the treaty should emanate from the party to which we are told it has been onerous and unacceptable.

I have, accordingly, on two occasions informed General Cass that if the Government of the United States be still of the same mind, and continue to desire the abrogation of the treaty of 1850, it would be agreeable to Her Majesty's Government that they should insert a proposal to that effect in their reply to my note respecting arbitration, and to that in which I explained the character and motives of the mission intrusted to Her Majesty's commissioner in Central America.

Some conversation ensued regarding the manner in which the dissolution of the treaty should be effected, and the condition by which it might be accompanied, and on these topics I have held the following language, premising that the views expressed were altogether spontaneous and personal, for I had no information of the intentions of Her Majesty's Government beyond the bare fact that they would entertain a proposal to cancel the engagements of 1850, emanating from the United States.

I stated that, in my opinion, the treaty in question could only be repealed by a new treaty in the usual forms, and that it might be desirable that such a treaty should not be restricted to a single article annulling its predecessor. Both for considerations of decency and policy, I advocated the insertion of stipulations involving an expression of a common policy in Central America, and the disavowal of any exclusive or monopolizing projects on either side. I said that I thought a treaty might be framed of three articles.

The first should declare the desire of the contracting parties to en-

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courage and protect the organization of transit routes in the interoceanic region, and bind those parties never to negotiate for any rights or privileges of transit with the Central American states of a preferential or exclusive character, to which other nations might not, by negotiation, be equally admitted, establishing thus the principle of an equal enjoyment of those avenues of trade for all the countries of the world.

The second article might recognize the jurisdiction of the transit route by the San Juan River, as being vested in the Government of Nicaragua. This had been already avowed by the United States in a treaty negotiated with that republic. It had not been definitively affirmed by Great Britain, and might seem to clash with the claims of the King of Mosquito to territorial possession or authority in those parts. I thought, however, that in regard to the views lately expressed by Her Majesty's Government in the course of recent negotiations, in consideration of the necessity of obtaining a suitable treaty with Nicaragua, and for the purpose of placing themselves in harmony with the course pursued by the United States, Her Majesty's Government might, on this head, accede to an article which would practically restrict their protectorate in Mosquito, and prevent the imputation of any interference on their part with the territory traversed by the river, and therefore by the transit route.

Finally, I suggested that Article III of the treaty should simply declare the provisions of the treaty of 1850 to be void and of no effect. I added that the question of future territorial acquisition in Central America would thus be thrown open to the United States; that Her Majesty's Government, on the other hand, would retain the colony of Honduras in the proportions which might be given to it by treaty arrangements with Guatemala, and that the Bay Islands would remain attached to the British Crown. Indeed, I affirmed, still as a personal opinion, but of the most positive character, that in case of the dissolution of the Clayton-Bulwer treaty, the Bay Islands would not be relinquished by Her Majesty's Government. I felt bound to make this statement, having observed in some quarters an impression that Her Majesty's Government might be disposed not only to annul the treaty, thus opening a path for the eventual annexation of the Isthmus to the Federal Union, but to give up the Bay Islands as well; a notion altogether unfounded in any intimation which has hitherto reached me from the foreign office, and which could not be reconciled in my opinion to the interests of England.

In reply to my observations the Secretary of State remarked that he would reserve the subject for the consideration of his government. He added, as a personal impression, that he was in favor of a naked, unqualified repeal of the Clayton-Bulwer treaty without conditions, and that such a repeal should be effected in the form of a treaty, though he alluded, with a certain deprecation, to the contingency of the dissolution of the treaty by an act of Congress. He also thought, however, that the matters at issue might be adjusted through the mission of Sir William Ouseley.

I was most careful to remark throughout that the opinions I enunciated with reference to the conditions under which the treaty should be abrogated were exclusively my own; and that it belonged to the Government of the United States to offer a suggestion for the purpose in question, as the overture should proceed from them. The only point on which I spoke with determination was that of the surrender of the Bay Islands, in which I trust that I have not misinterpreted the senti-

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ments of Her Majesty's Government. On the whole, I did not think that my informal communication was as favorably received as the previous declarations of the President and the Secretary of State on this subject might have warranted me in expecting.

I have, &c.,

NAPIER.

The EARL OF MALMESBURY.

55.—*Lord Malmesbury to Lord Napier.*

No. 58.] FOREIGN OFFICE, *April 8, 1858.*

MY LORD: I have received your lordship's dispatch of the 22d ultimo, reporting your conversation with General Cass upon the disposition of Her Majesty's Government to concur in a proposal to set aside the Clayton-Bulwer treaty, and I have to acquaint your lordship that Her Majesty's Government entirely approve of your having placed on record, by delivering to General Cass copies of those dispatches, that they were ready to abrogate that treaty.

In this state of things it will be proper that your lordship should abstain from any further discussion on that point, leaving the Government of the United States to appreciate as they may the announcement which you have thus made of the readiness of Her Majesty's Government to concur with the view of the subject expressed in the President's message; and your lordship, without further adverting to the question of abrogation, will only press for an early and decided answer to the proposal respecting arbitration which you have submitted to the Government of the United States. You will evince no eagerness for the acceptance of that proposal; neither will you exhibit anxiety for the abrogation of the treaty; and if the proposal is rejected you will not officially bring forward as the alternative the abrogation of the Clayton treaty, but announce your intention to report home and wait for instructions.

Her Majesty's Government, if the initiative is still left to them by the unwillingness of the United States themselves to propose abrogation, desire to retain full liberty as to the manner and form in which any such proposal shall be laid on their behalf before the cabinet at Washington; but, without pronouncing any decided opinion at the present moment, I think it right to point out to your lordship that the effect of such an article as that suggested in your dispatch as the second might be to perpetuate an entanglement with the Government of the United States, and to place that government in a position to question or control the free action of Her Majesty's Government in everything that relates to Central America. The Clayton-Bulwer treaty has been a source of unceasing embarrassment to this country and Her Majesty's Government, if they should be so fortunate as to extricate themselves from the difficulties which have resulted from it, will not involve themselves, directly or indirectly, in any similar difficulties for the future.

Her Majesty's Government would have no objection to enter with the United States into a self-denying engagement, such as that suggested in your first article, by which both parties should renounce all exclusive advantage in the use of any of the interoceanic routes, and should bind themselves each to the other, not to interfere with free transit. Such an article would be a suitable substitute for the Clayton-Bulwer treaty,

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for it would secure, as regards the contracting parties, the avowed object of that treaty—the freedom of interoceanic communication.

But beyond this Her Majesty's Government, as at present advised, are not prepared to contract any engagement as a substitute for the Clayton-Bulwer treaty, and from the abrogation of that compact, if it should take place, they will hold themselves as free to act in regard to Central America in the manner most conducive to the advancement of British interests and the fulfillment of British obligations as if the treaty had never been concluded.

Your lordship was, therefore, perfectly right in using decided language, such as that reported in your dispatch respecting the Bay Islands, and whenever the subject of the abrogation of the Clayton-Bulwer treaty is mooted in your presence, you will make it perfectly clear to the Government of the United States that to abrogate the treaty is to return to the *status quo ante* its conclusion in 1850; that Her Majesty's Government have no kind of jealousy respecting American colonization in Central America, which, indeed, it would help to civilize; and that we neither ask nor wish for any exclusive privileges whatever in those regions.

I am, &c.

MALMESBURY.

Lord NAPIER.

56.—*Mr. Cass to Mr. Lamar.*

[Extract.]

No. 9.] DEPARTMENT OF STATE,
Washington, July 25, 1858.

SIR: * * * These great avenues of inter-communication are vastly interesting to all commercial powers, and all may well join in securing their freedom and use against those dangers to which they are exposed from aggressions or outrages, originating within or without the territories through which they pass.

But the establishment of a political protectorate by any of the powers of Europe over any of the independent States of this continent, or, in other words, the introduction of a scheme or policy which would carry with it a right to interfere in their concerns, is a measure to which the United States have long since avowed their opposition, and which, should the attempt be made, they will resist by all the means in their power.

The reasons for the attitude they have assumed have been fully promulgated, and are everywhere well known. There is no need upon this occasion to recapitulate them. They are founded on the political circumstances of the American Continent, which has interests of its own, and ought to have a policy of its own, disconnected from many of the questions which are continually presenting themselves in Europe, concerning the balance of power, and other subjects of controversy arising out of the condition of its States, and which often find their solution or their postponement in war. It is of paramount importance to the States of this hemisphere that they should have no entangling union with the powers of the Old World; a connection which would almost necessarily make them parties to wars having no interest in them, and which would often involve them in hostilities with the other American States, contiguous or remote. The years which have passed by since this principle of separation was first announced by the United States have served still

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more to satisfy the people of this country of its wisdom and to fortify their resolution to maintain it happen what may.

The progress of events has rendered the interoceanic routes across the narrow portions of Central America vastly important to the commercial world, and especially to the United States, whose possessions extending along the Atlantic and Pacific coasts demand the speediest and easiest modes of communication. While the just rights of sovereignty of the States occupying this region should always be respected, we shall expect that these rights will be exercised in a spirit befitting the occasion and the wants and circumstances that have arisen. Sovereignty has its duties as well as its rights, and none of these local governments, even if administered with more regard to the just demands of other nations than they have been, would be permitted, in a spirit of Eastern isolation, to close these gates of intercourse on the great highways of the world, and justify the act by the pretension that these avenues of trade and travel belong to them, and that they choose to shut them, or, what is almost equivalent, to encumber them with such unjust regulations as would prevent their general use. The United States do not seek either the control or the exclusive use of these routes. They desire that the advantages should be equally common to all nations. Nor do they claim to interfere with the local governments in the determination of the questions connected with the opening of the routes, and with the persons with whom contracts may be made for that purpose. What they do desire, and mean to accomplish, is that the great interests involved in this subject should not be sacrificed to any unworthy motive, but should be guarded from abuse, and that when fair contracts are fairly entered into with American citizens, they should not be wantonly violated.

Other nations will no doubt pursue the same course in relation to their citizens or subjects who may have similar interests.

But besides these general considerations applicable to this subject, there are others which impose additional obligations upon these Isthmian Powers, and which bear with equal force upon their relations with other nations. Several of these powers, and Nicaragua especially, have in fact, by their public proceedings invited the co-operation of the capital, and industry, and enterprise of the world in order to open these lines of communication. The citizens of the United States have contributed their full share towards the accomplishment of the enterprise, and this government intends to use the means in its power to protect them in the enjoyment of their rights. The good faith of Nicaragua has been committed, and large sums have been expended looking to its faithful observance.

A paper has recently appeared in the public journals, to which I have already referred, purporting to be a contract between the governments—the Presidents rather—of Costa Rica and of Nicaragua and M. Belly, a French citizen, and his associates, constituting a new canal-route company, and providing for its operations. Nothing is known here officially of the authenticity of this paper, but it carries with it a strong probability that it is genuine, and presuming it to be so it furnishes you with an occasion to lay before these governments the views of the United States respecting their own interests and the interests of their citizens involved in the contracts for opening transit routes. So far as regards the action of Costa Rica, the President adheres to the views laid down in the instructions to our special agent, Mr. Jones, a copy of which has been communicated to those governments, and also furnished to yourself. And the United States, while they interpose no objection to an amicable adjustment by those republics of the question of their bound-

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ary line, will recognize no arrangement which interferes with the existing transit interests as insisted on in those instructions.

The United States no more claim for their citizens an exclusive right to form contracts for opening these transit routes than they claim for them the exclusive use of the routes when the work is completed. Their construction is a fair object of competition for the citizens and subjects of all other powers. The work is as open to M. Belly and his associates as to any other enterprising person. There are but two points connected with this matter which have any interest for the United States, or which would justify their intervention. The first is, that no contract with M. Belly, or with any one, indeed, should interfere with engagements previously existing with American citizens, but that all such engagements should be preserved inviolate; and the second is, that the regulations and conditions of the grant should be such as to render the routes free and safe to all nations, but controlled by no one, and upon moderate and reasonable terms. It would be equally impolitic and unjust for these governments, in a desire to make those great undertakings profitable to themselves, without furnishing any contribution towards their construction, to levy onerous charges upon the persons and property destined to pass over them, and by this means interpose serious obstacles to their general use. These local governments should look to the vast benefits which these enterprises will bring to the countries through which they pass, and not strive by excessive impositions to make them sources of revenue, and defeat, by this ill-judged measure, the very object sought to be obtained.

It is not necessary that I should enter into a detailed examination of M. Belly's contract. There are physical and financial obstacles, as well as political ones, in the way of its execution, some of which can hardly be overcome. I shall, therefore, only advert to one of the provisions, rather with a view to the future proceedings of these governments than from any practical bearing it will have in this case.

But previously to doing so I will bring to your notice one extraordinary stipulation which it could scarcely have been expected would be acceptable to the United States, and which must have been entered into in the anticipation of their objections to it. Those objections are insurmountable.

This obnoxious arrangement provides that the French Government shall have the right to keep two ships of war stationed in the waters of Lake Nicaragua for the entire duration of the works.

I am persuaded that this proposition will meet no favor from the French Government, and that its name has been introduced here unwarrantably and without its knowledge. The equality and security of these interoceanic routes constitute a great portion of their value to the world, and all commercial powers are interested in their maintenance. An exclusive right in one of these powers to exercise a permanent armed intervention would give serious cause of dissatisfaction to all the others, and the United States freely avow their determination to oppose such a measure should the Governments of Costa Rica and Nicaragua attempt to carry it into effect.

But there are additional conditions applicable to this contract with M. Belly and to other contracts for similar purposes entered into by the Government of Nicaragua which commend themselves to the Government of the United States, and will not be disregarded. There are several American citizens who, with different interests, claim to have formed engagements with the proper authorities of Nicaragua for opening and using the transit routes, with various stipulations defining their

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privileges and duties, and some of these contracts have already been in operation. This government has neither the authority nor the disposition to determine the conflicting interests of these claimants; but what it has the right to do, and what it is disposed to do, is to require that the Government of Nicaragua should act in good faith towards them, and should not arbitrarily and wrongfully divest them of rights justly acquired and solemnly guaranteed. The United States believe it to be their duty, and they mean to execute it, to watch over the persons and property of their citizens visiting foreign countries, and to intervene for their protection when such action is justified by existing circumstances and by the law of nations. Wherever their citizens may go through the habitable globe, when they encounter injustice they may appeal to the government of their country, and the appeal will be examined into with a view to such action in their behalf as it may be proper to take. It is impossible to define in advance and with precision those cases in which the national power may be exerted for their relief, or to what extent relief shall be afforded. Circumstances as they arise must prescribe the rule of action. In countries where well-defined and established laws are in operation, and where their administration is committed to able and independent judges, cases will rarely occur where such intervention will be necessary. But these elements of confidence and security are not everywhere found, and where that is unfortunately the case the United States are called upon to be more vigilant in watching over their citizens, and to interpose efficiently for their protection when they are subjected to tortious proceedings, by the direct action of the government, or by its indisposition or inability to discharge its duties.

But there is yet another consideration which calls for the attention of this government. These contracts with their citizens have a national importance. They affect not ordinary interests merely, but questions of great value, political, commercial, and social, and the United States are fully justified by the considerations already adverted to in taking care that they are not wantonly violated, and the safe establishment of an interoceanic communication put to hazard or indefinitely postponed. The course of the Government of Nicaragua with relation to these engagements contains nothing in it reassuring, for the future contracts duly executed with all the forms of law, carrying with them important vested rights, have been arbitrarily set aside by executive decrees—a mode of proceeding not recognized in the contracts themselves—and without resorting to the action of judicial tribunals. The facts in dispute have been unjustly assumed, and the hand of violence has been laid upon solemn engagements which ought to have found their security in the good faith of the government. I am not aware that in any case has the forfeiture of a contract been declared in any other way than by an arbitrary executive decree. This is a state of things to which no nation is bound to submit. It is vain to expect that the means of men and money required from other nations for the execution of these works will be furnished in the face of such manifestations of bad faith. Without confidence these great enterprises must fail; nor is it probable that one of them requiring a heavy outlay would now be undertaken and completed without some surer guarantee for their protection than would be furnished by the engagements of these Central American States. The danger of violation is too well known and appreciated to justify the expectation of the investment of capital under such unpropitious circumstances.

So long as a pecuniary object is supposed to furnish a motive for re-

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scinding existing contracts and forming new ones, without any regard to vested rights, no progress will be made in the construction of canals or of other permanent and expensive works for transportation.

The United States, acting in behalf of their citizens, object to this system of confiscation, and they do not doubt but that they will have the concurrence of all other powers who have similar interests in these vastly important measures. What the United States demand is, that in all cases where their citizens have entered into contracts with the proper Nicaraguan authorities, and questions have arisen, or shall arise, respecting the fidelity of their execution, no declaration of forfeiture, either past or to come, shall possess any binding force unless pronounced in conformity with the provisions of the contract, if there are any, or if there is no provision for that purpose, then unless there has been a fair and impartial investigation in such a manner as to satisfy the United States that the proceeding has been just and that the decision ought to be submitted to.

Without some security of this kind, this government will consider itself warranted, whenever a proper case arises, in interposing such means as it may think justifiable, in behalf of its citizens who may have been or who may be injured by such unjust assumption of power.

* * * * * * *

I am, &c.,

LEWIS CASS.

57.—*Mr. Cass to Lord Napier.*

DEPARTMENT OF STATE,
Washington, November 8, 1858.

MY LORD: I have had the honor to receive the copy which your lordship did me the favor to send me of Lord Malmesbury's dispatch to your lordship of August 18, in reference to Sir William Ouseley's mission, and have submitted it to the consideration of the President. From the statement of Lord Malmesbury that the British Government has no remaining alternative but that of "leaving the Cabinet of Washington to originate any further overtures for an adjustment of these controversies," it is quite obvious that the position of the President on this subject is not correctly understood by Her Majesty's Government. Since the announcement by your lordship in October, 1857, of Sir William Ouseley's special mission, the President has awaited not so much any new proposition for the adjustment of the Central American questions as the statement in detail which he had been led to expect of the method by which Sir William Ouseley was to carry into effect the previous proposition of the British Government. To make this plain, your lordship will pardon me for making a brief reference to what has occurred between the two governments in respect to Central America since the ratification of the Clayton-Bulwer treaty of 1850.

While the declared object of that convention had reference to the construction of a ship-canal, by the way of San Juan and the lakes of Nicaragua and Managua, from the Atlantic to the Pacific Oceans, yet it avowed none the less plainly a general principle in reference to all practicable communications across the isthmus, and laid down a distinct policy by which the practical operation of this principle was likely to be kept free from all embarrassment. The principle was that the interoceanic routes should remain under the sovereignty of the states through which

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they ran, and be neutral and free to all nations alike. The policy was, that in order to prevent any government outside of those states from obtaining undue control or influence over these interoceanic transits, no such nation should "erect or maintain any fortifications commanding the same, or in vicinity thereof, or should occupy or fortify or colonize or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America."

So far as the United States and Great Britain were concerned, these stipulations were expressed in unmistakable terms, and in reference to other nations it was declared that the contracting parties in this convention engage to invite every state with which both or either have friendly intercourse to enter into stipulations with them similar to those which they have entered into with each other. At that time the United States had no possessions whatever in Central America and exercised no dominion there. In respect to this government, therefore, the provisions of the first article of the treaty could operate only as a restriction for the future, but Great Britain was in the actual exercise of dominion over nearly the whole eastern coast of that country, and in relation to her this article had a present as well as a prospective operation. She was to abandon the occupancy which she already had in Central America, and was neither to make acquisitions or erect fortifications or exercise dominion there in the future. In other words, she was to place herself in the same position, with respect to possessions and dominion in Central America, which was to be occupied by the United States, and which both the contracting parties to the treaty engaged that they would endeavor to induce other nations to occupy. This was the treaty as it was understood and assented to by the United States, and this is the treaty as it is still understood by this government. Instead, however, of giving effect to it in this sense, the British Government proceeded in 1851, only a few months after the signature of the treaty, to establish a new British colony in Central America under the name of the "Bay Islands"; and when this government expressed its great surprise at this proceeding and at the failure of Great Britain to comply with the terms of the convention, Her Majesty's Government replied that the Islands already belonged to Great Britain at the date of the treaty, and that the convention, in their view of it, interfered with none of their existing possessions in Central America, but was wholly prospective in its character and only prevented them from making new acquisitions. It is unnecessary to do more than simply refer to the earnest and able discussions which followed this avowal, and which show more and more plainly the opposite constructions which were placed upon the treaty by the two governments.

In 1854 it was sought to reconcile these constructions and to terminate the Central American questions by the convention which was signed at London by the American minister and Lord Clarendon, usually designated the Dallas-Clarendon treaty. The terms of this treaty are, doubtless, familiar to your lordship.

It provides—

1. For the withdrawal of the British protectorate over the Mosquito Indians, and for an arrangement in their behalf upon principles which were quite acceptable to the United States.

2. It regulated the boundaries of the Belize settlements within which Great Britain claimed to exercise certain possessory rights upon terms which, although not wholly acceptable to this government, were yet in a spirit of generous concession ratified by the United States Senate.

3. It provided for a cession of the Bay Islands to Honduras (in the

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opinion of this government their rightful proprietor), but this concession was made dependent upon an unratified treaty between Great Britain and Honduras, whose terms were not officially known to this government, but which, so far as they had unofficially appeared, were not of a satisfactory character.

The Senate, therefore, in ratifying the Dallas-Clarendon treaty, felt obliged to amend it by striking out all that part of it which contemplated the concurrence of this government in the treaty with Honduras, and simply providing for a recognition by the two governments of the sovereign right of Honduras to the islands in question. Great Britain found itself unable to concur in this amendment, and the Dallas-Clarendon treaty, therefore, fell to the ground. It was clear, however, that the objections of the Senate to the Honduras treaty were not deemed unreasonable by Her Majesty's Government, because, in your lordship's interview with the President on the 22d October, 1857, your lordship "allowed that the articles establishing the administrative independence of the islands might have been larger than was necessary." "I had observed," you added, "the same impression in the correspondence of Mr. Wyke, Her Majesty's chargé d'affaires at Guatemala, who seemed to admit that a greater participation in the internal government might be granted to the authorities of Honduras," and you made "no doubt that Her Majesty's Government would entertain any reasonable suggestions which might be offered to them in that sense."

And again, in your lordship's note to this department of November 30, 1857, you recognize the same probability "that the intervention of the Honduras Government in the administration of the islands may have been more limited than was necessary or even advisable."

Such was doubtless the opinion of Honduras, for as long ago as May 10, 1857, I was informed by your lordship that the treaty remained unratified "owing to some objections on the part of the government of Honduras," and that "Her Majesty's Government does not expect that the treaty in its present shape will be definitely sanctioned by that republic."

In view of the objectionable provisions of this convention with Honduras, and of its failure to be sanctioned by that republic, your lordship, by the authority of Lord Clarendon, informed me on the 6th of May, 1857, that her Majesty's Government was prepared to sanction a new treaty, in respect to the Central American questions, which should in all respects conform to the Dallas-Clarendon treaty, as ratified by the Senate, except that to the simple recognition in the Senate's substitute for the second separate article of the sovereignty of Honduras over the Bay Islands there was to be added the following passage: "Whenever and so soon as the Republic of Honduras shall have concluded and ratified a treaty with Great Britain by which Great Britain shall have ceded and the Republic of Honduras shall have accepted the said islands subject to the provisions and conditions contained in said treaty." While this condition contemplated a new treaty with Honduras which might possibly avoid the objectionable provisions of the old one, yet it was quite impossible for the United States to become a party, either directly or indirectly, to a convention which was not in existence, or whose terms and conditions it could neither know nor control. For this reason I informed your lordship in my communication of May 29 that your lordship's proposition was declined by this government.

The attempts to adjust the Central American questions by means of a supplementary treaty having thus failed of success, and the subject not being of a character, in the opinion of the United States, to admit of

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their reference to arbitration, the two governments were thrown back upon their respective rights under the Clayton-Bulwer treaty. While each government, however, had continued to insist upon its own construction of this treaty, there was reason to believe that the embarrassments growing out of their conflicting views of its provisions might be practically relieved by direct negotiations between Her Majesty's Government and the states of Central America.

In this way it seemed possible that, without any injustice to those states, the treaty might be rendered acceptable to both countries as well as operative for the disinterested and useful purposes which it had been designed to serve. The President, therefore, was glad to learn from your lordship, on the 19th of October, 1857, that Her Majesty's Government had "resolved to dispatch a representative of authority and experience to Central America, to make a definitive settlement of all the matters with regard to which the United States and England were still at variance, and who would be instructed," as your lordship believed, "to carry the Clayton-Bulwer treaty into execution according to the general tenor of the interpretation put upon it by the United States, but to do so by separate negotiation with the Central American republics in lieu of a direct engagement with the Federal Government." This announcement could not fail to be received with satisfaction by the President, because it contemplated the substantial accomplishment of the very purposes in respect to the treaty which the United States had always had in view, and so long as these were accomplished he assured your lordship that "to him it was indifferent whether the concession contemplated by Her Majesty's Government were consigned to a direct engagement between England and the United States or to treaties between the former and the Central American republics; the latter method might, in some respects," he added, "be even more agreeable to him, and he thought it would be more convenient to Her Majesty's Government, who might, with greater facility, accede to the claims of the weaker party."

It is unnecessary to refer at length to what was said in this conversation, or to a second one on the same subject which your lordship had with the President on the evening of October 23; but there can be no doubt that in both interviews the expected mission of Sir William Ouseley (who it was understood had been selected as the plenipotentiary referred to), in connection with what your lordship indicated as his probable instructions, was favorably regarded by the President. So much was this the case, that he gave your lordship his full assurance that should your lordship's announcement be confirmed by any official information such as he could use, he would change that part of his message which related to Great Britain, would encourage no attempt in Congress to annul the treaty while the mission was in progress, and nothing would give him greater pleasure, he said, "than to add the expression of his sincere and ardent wish for the maintenance of friendly relations between the two countries."

At the close of the second interview, he even went so far as to remark, in reference to the extended boundary claimed by Great Britain for the Belize (to which he had ever objected), that he could take no absolute engagement in this matter; but he would say this much, "that if the Bay Islands were fairly and handsomely evacuated, such a measure would have a great effect with him, and with the American people, in regard to the settlement of the other points at issue."

Sir William Ouseley arrived in Washington about the middle of No-

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vember, and on the 30th of November I received from your lordship an official statement in outline of the purposes of his mission.

On the 5th December, your lordship inclosed to me a copy of Lord Clarendon's dispatch of November 20, in which your lordship's previous statement was substantially confirmed, and in which it was further stated that "Sir William Ouseley, during his visit to Washington, will, in pursuance of his instructions, have explained with the utmost frankness to the Government of the United States the nature of the instructions with which he is furnished, and your lordship, as the duly accredited organ of Her Majesty's Government, will have given similar explanations."

The objects of Sir William Ouseley's mission, as thus made known to the United States, were:

1. To provide for the transfer by Great Britain of the Bay Islands to the Government of Honduras; and in this transfer it was especially declared that the stipulations in the British treaty with Honduras were not to be rigidly adhered to. Sir William Ouseley, on the contrary, while requiring provisions to secure the vested rights of British subjects in the Bay Islands, was to be left at liberty to contract engagements with Honduras which should embody not only an unmistakable recognition of its sovereignty over these islands, but should allow of a more direct government and a more efficient protection over them by that republic than had been contained in the convention of 1856.

2. The second object of Sir William Ouseley's mission was the settlement of the question of the Mosquito protectorate with Nicaragua and Honduras. Whilst he was to provide for the compensation, the government, and the protection of the Mosquito Indians under the sovereignty of Nicaragua, this was to be done upon terms not less favorable than those which had received the approbation of the Senate in the Dallas-Clarendon treaty. In no degree was the Indian reserve to trespass on the territory applicable to transit purposes.

3. The regulation of the frontier of British Honduras was to be effected by negotiation with the Government of Guatemala. Her Majesty's Government trusted to obtain from that republic a recognition of limits "which, if we may judge from previous communications on the subject, may be accepted in a spirit of conciliation, if not with absolute approval, by the President."

Such were the overtures communicated by your lordship's note to this Department of November 30, and which were again referred to in Lord Clarendon's note to your lordship of November 20, of which you inclosed to me a copy in your lordship's note of December 5. Inasmuch as the announcement of Sir William Ouseley's mission, with the explanation by your lordship of its general purposes, had been received with much satisfaction by the President, there were some expressions in this note of Lord Clarendon's which it was not easy to understand; but which, nevertheless, did not materially change the general character of the overtures. It was still stated in that dispatch "that the objections entertained in the United States to the construction placed upon that treaty by the British Government are, as every impartial person must admit, in a fair way to be removed by the voluntary act of the latter; and while the objects of Sir William's mission continued to be mentioned in only general terms, it was yet added that during his visit to Washington he will, in pursuance of his instructions, have explained with the utmost frankness the nature of the instructions with which he is furnished, and your lordship, as the duly accredited organ of Her Majesty in the United States, will have given similar explanations."

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The President did not hesitate, therefore, in his message to Congress, to refer to these overtures as having recently been made by the British Government in a friendly spirit, which he cordially reciprocated. He could do no more than this, whatever might be his hopes for the success of Sir William's mission, until he had received the further explanations concerning it which he had been led to expect, and which he was prepared to consider in the kindest and most respectful manner. The general remarks contained in the outline of November 30 must have been molded into some specific form, in order to enable this government to arrive at a practical decision upon the questions presented to it. This I understood to be the view of your lordship and Sir William Ouseley, as well as that of the president and this Department. Indeed, it was wholly in conformity with this view that Sir William Ouseley was understood to have called at Washington on his way to Central America. Had he proceeded directly to his destination, and there, by separate treaties with the Central American republics, given substantial effect to the Clayton-Bulwer convention, according to the general tenor of the American construction of that instrument, the Central American controversy would then have been fortunately terminated to the satisfaction of both governments. But since this government, in a spirit of comity, which the President fully appreciates, was asked to co-operate in accomplishing this result, it was surely not unreasonable that it should know specifically the arrangements which it was expected to sanction.

The general objects in view, we were acquainted with and approved, but there was no draft of a treaty, no form of separate article, no definition of measures. The Bay Islands were to be surrendered, but under what restrictions? The Dallas-Clarendon treaty was to be modified, but what were the modifications? The rights of British subjects and the interests of British trade were to be protected in Ruatan, but to what extent and by what conditions? Honduras was to participate more largely in the government of the Bay Islands than she was allowed to do by the convention of 1856, but how far was she to be restrained and what was to be her power?

These and other similar questions naturally arose upon the general overtures contained in your lordship's note of November 30, and seemed naturally enough to justify the hope which was entertained of some further explanation of these overtures. In all my conversations with your lordship on the subject of Sir William's mission, subsequent to the meeting of Congress, this expectation of some further and more definite communication concerning it was certainly taken for granted, and until time was given to receive such a communication, you did not press for any answer to your lordship's note of November 30. In the beginning your lordship seemed to think that some embarrassment or delay in prosecuting the mission might be occasioned by the expedition to Nicaragua which had been undertaken by General Walker, and by the Cass-Yrisarri treaty which had been negotiated with that republic by the United States; but the treaty was not disapproved by Her Majesty's Government and the expedition of Walker was promptly repressed, so that no embarrassment from these sources could be further apprehended. As the delay still continued, it was suggested by your lordship, and fully appreciated by me, that Her Majesty's Government was necessarily occupied with the affairs of Her Majesty's possessions in India, which then claimed its immediate attention to the exclusion naturally of business which was less pressing, and hence I awaited the expected instructions without any anxiety whatever. All this is precisely what your lordship very frankly describes in your lordship's communication to this

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Department of April 12, 1858. "I addressed my government," your lordship says, "with a view to obtaining further explanations and instructions, and I informed you that it was not my desire to press for an official reply to the overtures of the Earl of Clarendon pending an answer from London."

The explanations, however, anticipated by your lordship and by myself were not received, and about three months after the arrival of Sir William at Washington you expressed to me your regret that you had held out expectations which proved unfounded and which had prompted delay, and then for the first time requested an answer to the proposals of Her Majesty's Government, and "especially to that part of them relating to arbitration." It was even then suggested that the answer was desired because it was thought to be appropriate as a matter of form and not because the explanations which had been waited for were deemed wholly unnecessary. "I overlooked something due to forms," is your lordship's language in the note of April 12, "in my anxiety to promote a clearer understanding, and I eventually learned in an official shape that Her Majesty's Government, following their better judgment, desired, before making any further communication, a reply to their overtures, and especially to that part of them referring to arbitration. Should the new proffer of arbitration be declined, it was clearly not supposed in your note of February 15 that this result would have any tendency to interrupt Sir William's efforts; but in that event it was hoped," you informed me, that these efforts "would result in a settlement agreeable to the United States, inasmuch as in essential points it would carry the treaty of 1850 into operation in a manner practically conformable to the American interpretation of that instrument."

On the 6th of April I replied to your lordship's note of February 15, with a very frank and full statement of the views of this government upon all the points to which your lordship had referred. The renewed offer of arbitration mentioned in a dispatch of Lord Clarendon was explicitly declined for the same reasons which had occasioned its rejection before, but an earnest hope was expressed for the success of Sir William Ouseley's mission, and I was instructed formally to request from your lordship those further explanations concerning it, which had been promised in Lord Clarendon's note of November 20, for which both your lordship and myself had waited for three months in vain, and which, up to this time, have never been furnished to the American Government. The disappointment which the President felt at some portions of the correspondence which had occurred, and especially at the failure of Her Majesty's Government to inform him more fully than it had done, on the subject of the mission, was communicated to your lordship without the least reserve, but in the purposes of that mission, so far as he understood them, I was authorized to say that he fully concurred, and to add his sincere hope that they might be successfully accomplished.

"The President," I informed you, "has expressed his entire concurrence in the proposal for an adjustment of the Central American questions, which was made to him by your lordship last October, and he does not wish that any delay or defeat of that adjustment shall be justly chargeable to this government. Since, however, he is asked to co-operate in the arrangement by which it is expected to accomplish it, it is essential that he should know with reasonable accuracy what those arrangements are." It was in the hope of this adjustment, as well as with a view to the serious consequences which might flow from a naked repeal of the Clayton-Bulwer treaty, that I made the observations on that subject which are contained in my letter to your lordship of April 6. No de-

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mand for this abrogation, your lordship is well aware, had then been made by Her Majesty's Government; but your lordship had several times suggested to me that such an alternative, if proposed by the United States, would be respectfully considered by Great Britain, and in your lordship's belief might in some form or other be finally adopted. You informed me, however, at the same time that in that event Great Britain would not be inclined to surrender its possessions in Central America, and would certainly continue to occupy the Bay Islands. In reply to this announcement, I informed your lordship that since it is well known that the views of this government are wholly inconsistent with these pretensions, and that it can never willingly acquiesce in their maintenance by Great Britain, your lordship will readily perceive what serious consequences might follow a dissolution of the treaty, if no provision should be made at the same time for adjusting the questions which led to it.

"If, therefore," I added, "the President does not hasten to consider now the alternative of repealing the treaty of 1850, it is because he does not wish to anticipate the failure of Sir William Ouseley's mission, and is disposed to give a new proof to Her Majesty's Government of his sincere desire to preserve the amicable relations which now happily subsist between the two countries."

Having thus complied with your lordship's request, and given that formal reply to the overtures embraced in Sir William Ouseley's mission which was desired by Her Majesty's Government, I confidently expected to receive within a reasonable time these additional instructions which appeared to have been delayed for this reply. Such, doubtless, was the hope, also, of your lordship. "The discussion has been deferred," you informed me in your note of April 12, "but the interests at stake have probably not suffered." The results of the negotiation between Nicaragua and the United States are not yet disclosed, and it is probable that Sir William Ouseley may proceed to his destination with more advantage when the nature of those engagements is fully defined." "If the American Cabinet," you also said, "as may be inferred from your expressions, be well disposed toward Sir William Ouseley's mission, and will meet her Majesty's Government in a liberal spirit on matters of secondary moment, that mission may still conduct us to a happy termination." In further informing me that my communication would be transmitted to Her Majesty's Government, you added, "It remains with Her Majesty's Government to determine whether they can afford the more perfect information desired."

This was the state of the negotiation in April, 1858. The purposes of Sir William Ouseley's mission had been announced to the American Government and approved; reference had been made by Lord Clarendon to your lordship and Sir William Ouseley for further explanations; these explanations had been asked for from your lordship in repeated interviews, but your lordship had not received the necessary instructions to make them until a reply had been received to the general overtures embraced in your previous notes, and especially to that part of them relating to arbitration; this reply had been given, still approving the mission and rejecting the arbitration; and it had been sent to London for the consideration of Her Majesty's Government.

Under these circumstances, I need not describe to your lordship the surprise with which I received the copy of Lord Malmesbury's dispatch to your lordship, dated at Potsdam, August 18, which you were good enough to inclose to me. In this dispatch, instead of affording any more exact definition of the objects of Sir William Ouseley's mission, your

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lordship is directed to inform me that Her Majesty's Government "have, in fact, nothing to add to the explanations given by Sir William and your lordship upon the subject." As no explanations whatever had been received from either Sir William or yourself since the communication of November 30, it is obvious that his lordship must labor under some misapprehension on this subject; and equally clear is it that when his lordship represents me as having declared in my note of the 6th of April that the Government of the United States could not agree to the abrogation of the Clayton-Bulwer treaty, that he has failed to appreciate fully the views of the United States in reference to that abrogation. The declaration in my note of April 6 was certainly not against any abrogation of the treaty, but against considering the expediency of abrogating it at that particular time, and until hopes were at an end for a successful termination of Sir William Ouseley's mission. This waiver of a discussion on the subject of abrogation, in deference to the purposes of that mission, indicated very clearly, it seems to me, how much was expected by this government from Sir William Ouseley's mission. Yet even these efforts Lord Malmesbury seems to regard as having been rejected by the United States, and Her Majesty's Government, he concludes, have no alternative but that of leaving to the Cabinet of Washington to originate any further overtures for an adjustment of these controversies.

Surely, my lord, there must be some grave misapprehension in all this of the views entertained and expressed by this government upon the proposals embraced in your lordship's note of November 30, or else this government has labored under an equally serious error as to what was intended by Sir William Ouseley's mission. It is under this impression, and in order to prevent two great nations from failing in their attempts to adjust an important controversy from a mere question of form, or a mere misunderstanding of each other's views, that I have entered into this extended narrative. It is of no small consequence, either to the United States or Great Britain, that these Central American controversies between the two countries should be forever closed.

On some points of them, and I have been led to hope on the general policy which ought to apply to the whole Isthmian region, they have reached a common ground of agreement.

The neutrality of the interoceanic routes and their freedom from the superior and controlling influence of any one government, the principles upon which the Mosquito protectorate may be arranged, with justice alike to the sovereignty of Nicaragua and the Indian tribes, the surrender of the Bay Islands under certain stipulations for the benefit of trade and the protection of their British occupants, and the definition of the boundaries of the British Belize—about all these points there is no apparent disagreement except as to the conditions which shall be annexed to the Bay Islands' surrender, and as to the limits which shall be fixed to the settlements of the Belize. Is it possible that, if approached in a spirit of conciliation and good feeling, these two points of difference are not susceptible of a friendly adjustment? To believe this would be to underestimate the importance of the adjustment, and the intelligent appreciation of this importance which must be entertained by both nations.

What the United States want in Central America, next to the happiness of its people, is the security and neutrality of the interoceanic routes which lead through it. This is equally the desire of Great Britain, of France, and of the whole commercial world. If the principles and policy of the Clayton-Bulwer treaty are carried into effect, this ob-

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ject is accomplished. When, therefore, Lord Malmesbury invites new overtures from this government upon the idea that it has rejected the proposal embraced in Sir William Ouseley's mission for an adjustment of the Central American questions by separate treaties with Honduras, Nicaragua, and Guatemala, upon terms substantially according with the general tenor of the American interpretation of the treaty, I have to reply that this very adjustment is all that the President ever desired, and that instead of having rejected that proposal he had expressed his cordial acceptance of it so far as he understood it, and had anticipated from it the most gratifying consequences.

Nothing now remains for me but to inquire of your lordship whether the overtures contained in your lordship's note of November 30, are to be considered as withdrawn by Her Majesty's Government, or whether the good results expected in the beginning from Sir William Ouseley's mission may not yet be happily accomplished.

I have, &c.,

LEWIS CASS.

58.—*Lord Malmesbury to Lord Napier.*

[Extract.]

FOREIGN OFFICE, *December 8, 1858.*

MY LORD: I have to inform your lordship that Her Majesty's Government have received with lively satisfaction the note which General Cass addressed to your lordship on the 8th of November. The friendly tone in which it is written, and the high appreciation which it displays of the importance of terminating the irritating discussions in which both our countries have been so long involved, cannot but tend to render that termination near at hand and permanent.

I feel it to be a duty to do justice to the accuracy with which General Cass has recapitulated the circumstances under which the controversy has been sustained, and the efforts hitherto employed to settle it have failed.

* * * * * * *

I am, &c.,

MALMESBURY.

59.—*Convention between Great Britain and Guatemala. Signed at Guatemala April 30, 1859.*

Whereas the boundary between Her Britannic Majesty's settlement and possessions in the Bay of Honduras and the territories of the Republic of Guatemala has not yet been ascertained and marked out; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the Republic of Guatemala, being desirous, with a view to improve and perpetuate the friendly relations which happily subsist between the two countries, to define the boundary aforesaid have resolved to conclude a convention for that purpose, and have named as their plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Charles Lennox Wyke, esquire, Her Britannic Majesty's chargé d'affaires to the Republic of Guatemala, and his excellency the President of the Republic of Guatemala, Don Pedro de Aycinena, councillor of state and minister for foreign affairs;

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Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

ART. I. It is agreed between Her Britannic Majesty and the Republic of Guatemala, that the boundary between the republic and the British settlement and possessions in the Bay of Honduras, as they existed previous to and on the 1st day of January, 1850, and have continued to exist up to the present time, was and is as follows:

Beginning at the mouth of the River Sarstoon, in the Bay of Honduras, and proceeding up the mid-channel thereof to Gracias á Dios Falls; then turning to the right and continuing by a line drawn direct from Gracias á Dios Falls to Garbutt's Falls, on the River Belize, and from Garbutt's Falls due north until it strikes the Mexican frontier.

It is agreed and declared between the High Contracting Parties that all the territory to the north and east of the line of boundary above described belongs to Her Britannic Majesty; and that all the territory to the south and west of the same belongs to the Republic of Guatemala.

ART. II. Her Britannic Majesty and the Republic of Guatemala shall, within 12 months after the exchange of the ratifications of the present convention, appoint each a commissioner for the purpose of designating and marking out the boundary described in the proceding article. Such commissioners shall ascertain the latitude and longitude of Gracias á Dios Falls and of Garbutt's Falls, and shall cause the line of boundary between Garbutt's Falls and the Mexican territory to be opened and marked where necessary, as a protection against future trespass.

ART. III. The commissioners mentioned in the preceding article shall meet at such place or places as shall be hereafter fixed, at the earliest convenient period after they shall have been respectively named; and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, without fear, favour, or affection to their own country, upon all the matters referred to them for their decision, and such declaration shall be entered on the record of their proceedings. The commissioners shall then, and before proceeding to any other business, name some third person to act as arbitrator or umpire in any case or cases in which they may themselves differ in opinion. If they should not be able to agree upon the choice of such a third person, they shall each name a person; and in each and every case in which the commissioners may differ in opinion as to the decision which they ought to give, it shall be determined by lot which of the two persons so named shall be the arbitrator or umpire in that particular case. The person or persons so to be chosen shall, before proceeding to act, make and subscribe a solemn declaration, in a form similar to that which shall already have been made and subscribed by the commissioners, which declaration shall also be entered on the record of the proceedings. In the event of the death, absence, or incapacity of either of such commissioners, or of either of such arbitrators or umpires, or of his omitting, or declining, or ceasing to act, another person shall be named, in the same manner, to act in his place or stead, and shall make and subscribe such declaration as aforesaid.

Her Britanic Majesty and the Republic of Guatemala shall engage to consider the decision of the two commissioners conjointly, or of the arbitrator or umpire, as the case may be, as final and conclusive on the matters to be respectively referred to their decision, and forthwith to give full effect to the same.

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ART. IV. The commissioners hereinbefore mentioned shall make to each of the respective governments a joint report or declaration, under their hands and seals, accompanied with a map or maps in quadruplicate (two for each government), certified by them to be true maps of the boundary defined in the present treaty, and traversed and examined by them.

ART. V. The commissioners and the arbitrator or umpire shall keep accurate records and correct minutes or notes of all their proceedings, with the dates thereof, and shall appoint and employ such surveyors, clerk or clerks, or other persons as they shall find necessary to assist them in the transaction of the business which may come before them.

The salaries of the commissioners shall be paid by their respective governments. The contingent expenses of the commission, including the salary of the arbitrator or umpire, and of the surveyors and clerks, shall be defrayed in equal moieties by the two governments.

ART. VI. It is further agreed that the channels in the water-line of boundary described in Article I of the present convention shall be equally free and open to the vessels and boats of both parties, and that any islands which may be found therein shall belong to that party on whose side of the main navigable channel they are situated.

ART. VII. With the object of practically carrying out the views set forth in the preamble of the present convention for improving and perpetuating the friendly relations which at present so happily exist between the two High Contracting Parties, they mutually agree conjointly to use their best efforts, by taking adequate means for establishing the easiest communication (either by means of a cart-road or employing the rivers, or both united, according to the opinion of the surveying engineers) between the fittest place on the Atlantic coast, near the settlement of Belize and the capital of Guatemala, whereby the commerce of England on the one hand, and the material prosperity of the Republic on the other, cannot fail to be sensibly increased, at the same time that the limits of the two countries being now clearly defined, all further encroachments by either party on the territory of the other will be effectually checked and prevented for the future.

ART. VIII. The present convention shall be ratified, and the ratifications shall be exchanged at London or Guatemala as soon as possible within the space of 6 months.

In witness whereof, the respective plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Guatemala, the 30th day of April, in the year 1859.

[L. S.] CHARLES LENNOX WYKE.
[L. S.] P DE AYCINENA.

60.—*Treaty between Great Britain and Honduras respecting the Bay Islands, the Mosquito Indians, and the rights and claims of British subjects, signed at Comayagua, November 28, 1859.*

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the Republic of Honduras, being desirous to settle in a friendly manner certain questions in which they are mutually interested, have resolved to conclude a Treaty for that purpose, and have named as their Plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Charles Lennox Wyke, esquire, Companion of the Most Honor-

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able Order of the Bath, Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, on a special mission to the Republics of Central America; and his Excellency the President of the Republic of Honduras, Don Francisco Cruz, Political Chief of the Department of Comayagua.

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

ART. I. Taking into consideration the peculiar geographical position of Honduras, and in order to secure the neutrality of the islands adjacent thereto, with reference to any railway or other line of interoceanic communication which may be constructed across the territory of Honduras on the mainland, Her Britannic Majesty agrees to recognize the Islands of Ruatan, Guanaca, Elena, Utile, Barbarete, and Morat, known as the Bay Islands, and situated in the Bay of Honduras, as a part of the Republic of Honduras.

The inhabitants of the said islands shall not be disturbed in the enjoyment of any property which they may have acquired therein, and shall retain perfect freedom of religious belief and worship, public and private, but remaining in all other respects subject to the laws of the Republic. If any of them should wish to withdraw from the islands, they shall be at full liberty to do so; to dispose of their fixed or other property as they may think fit, and to take with them the proceeds thereof.

The Republic of Honduras engages not to cede the said islands, or any of them, or the right of sovereignty over such islands, or any of them, or any part of such sovereignty, to any nation or state whatsoever.

ART. II. Her Britannic Majesty engages, subject to the conditions and engagements specified in the present Treaty, and without prejudice to any question of boundary between the Republics of Honduras and Nicaragua, to recognize as belonging to and under the sovereignty of the Republic of Honduras the country hitherto occupied or possesed by the Mosquito Indians within the frontier of that Republic, whatever that frontier may be. The British protectorate of that part of the Mosquito territory shall cease 3 months after the exchange of the ratifications of the present treaty, in order to enable Her Majesty's Government to give the necessary instructions for carrying out the stipulations of said treaty.

ART. III. The Mosquito Indians in the district recognized by Article II of this treaty as belonging to and under the sovereignty of the Republic of Honduras shall be at liberty to remove, with their property, from the territory of the Republic, and to proceed whithersoever they may desire, and such of the Mosquito Indians who remain within the said district shall not be disturbed in the possession of any lands or other property which they may hold or occupy, and shall enjoy, as natives of the Republic of Honduras, all rights and privileges enjoyed generally by the natives of the Republic.

The Republic of Honduras being desirous of educating the Mosquito Indians, and improving their social condition in the district so occupied by them, will grant an annual sum of 5,000 dollars, in gold or silver, for the next 10 years for that purpose, to be paid to their headman in the said district, the payment of such annual sum being guaranteed them by a mortgage on all woods and other natural productions (whatever they may be) of the state lands in the Bay Islands and the Mosquito territory. These payments shall be made in half-yearly instalments of 2,500 dollars each, the first of which payments shall be made 6 months after the exchange of the ratifications of the present treaty.

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ART. IV. Whereas British subjects have, by grant, lease, or otherwise, heretofore obtained from the Mosquito Indians interests in various lands situated within the district mentioned in the preceding article, the Republic of Honduras engages to respect and maintain such interests; and it is further agreed that Her Britannic Majesty and the Republic shall, within 12 months after the exchange of the ratifications of the present Treaty, appoint two commissioners, one to be named by each party, in order to investigate the claims of British subjects arising out of such grants or leases, or otherwise, and all British subjects whose claims shall, by the commissioners, be pronounced well founded and valid, shall be quieted in the possession of their respective interests in the said lands.

ART. V. It is further agreed between the contracting parties that the commissioners mentioned in the preceding article shall also examine and decide upon any British claims upon the Government of Honduras that may be submitted to them, other than those specified in that article, and not already in a train of settlement; and the Republic of Honduras agrees to carry into effect any agreements for the satisfaction of British claims already made, but not yet carried into effect.

ART. VI. The commissioners mentioned in the preceding articles shall meet in the city of Guatemala, at the earliest convenient period after they shall have been respectively named, and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, without fear, favor, or affection to their own country, all the matters referred to them for their decision, and such declaration shall be entered on the record of their proceedings.

The commissioners shall then, and before proceeding to any other business, name some third person to act as an arbitrator or umpire in any case or cases in which they may themselves differ in opinion. If they should not be able to agree upon the selection of such a person, the commissioner on either side shall name a person; and in each and every case in which the commissioners may differ in opinion as to the decision which they ought to give, it shall be determined by lot which of the two persons so named shall be arbitrator or umpire in that particular case. The person or persons so to be chosen shall, before proceeding to act, make and subscribe a solemn declaration, in a form similar to that which shall already have been made and subscribed by the commissioners, which declaration shall also be entered on the record of the proceedings.

In the event of the death, absence, or incapacity of such person or persons, or of his or their omitting, or declining, or ceasing to act as such arbitrator or umpire, another person or persons shall be named as aforesaid to act as arbitrator or umpire in his or their place or stead, and shall make and subscribe such declaration as aforesaid.

Her Britannic Majesty and the Republic of Honduras hereby engage to consider the decision of the commissioners conjointly, or of the arbitrator or umpire, as the case may be, as final and conclusive on the matters to be referred to their decision; and they further engage forthwith to give full effect to the same.

ART. VII. The commissioners and the arbitrator or umpire shall keep an accurate record and correct minutes or notes of all their proceedings, with the dates thereof, and shall appoint and employ a clerk or other persons to assist them in the transaction of the business which may come before them.

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The salaries of the commissioners shall be paid by their respective governments. The contingent expenses of the commission, including the salary of the arbitrator or umpire, and of the clerk or clerks, shall be defrayed in equal halves by the two governments.

ART. VIII. The present Treaty shall be ratified, and the ratifications shall be exchanged at Comayagua as soon as possible within 6 months from this date.

In witness whereof, the respective plenipotentiaries have signed the same, and have affixed thereto their respective seals.

Done at Comayagua the 28th day of November, in the year of our Lord 1859.

[L. S.] C. LENNOX WYKE.
[L. S.] FRANCISCO CRUZ.

61.—*Treaty between Great Britain and Nicaragua relative to the Mosquito Indians and to the rights and claims of British subjects. Signed at Managua January 28, 1860.*

Her Majesty the Queen of the United Kingdom of Great Britian and Ireland, and the Republic of Nicaragua, being desirous to settle in a friendly manner certain questions in which they are mutually interested, have resolved to conclude a Treaty for that purpose, and have named as their plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Charles Lennox Wyke, esquire, Companion of the Most Honorable Order of the Bath, Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary on a special mission to the Republics of Central America; and his Excellency the President of the Republic of Nicaragua, Don Pedro Zeledon, Minister for Foreign Affairs.

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

ART. I. On exchanging the ratifications of the present Treaty, Her Britannic Majesty, subject to the conditions and engagements specified therein, and without prejudice to any question of boundary between the Republics of Nicaragua and Honduras, will recognize as belonging to and under the sovereignty of the Republic of Nicaragua the country hitherto occupied or claimed by the Mosquito Indians within the frontier of that Republic, whatever that frontier may be.

The British protectorate of that part of the Mosquito territory shall cease three months after the exchange of the ratifications of the present Treaty; in order to enable Her Majesty's Government to give the necessary instructions for carrying out the stipulations of said treaty.

II. A district within the territory of the Republic of Nicaragua shall be assigned to the Mosquito Indians, which district shall remain, as above stipulated, under the sovereignty of the Republic of Nicaragua. Such district shall be comprised in a line, which shall begin at the mouth of the river Rama, in the Caribbean Sea; thence it shall run up the mid-course of that river to its source, and from such source proceed in a line due west to the meridian of 84° 15′ longitude west from Greenwich; thence due north up the said meridian until it strikes the river Hueso, and down the mid-course of that river to its mouth in the sea, as laid down in Baily's map at about latitude from 14° to 15° north, and longitude 83° west from the meridian of Greenwich; and thence

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southerly along the shore of the Caribbean Sea to the mouth of the river Rama, the point of commencement. But the district thus assigned to the Mosquito Indians may not be ceded by them to any foreign person or state, but shall be and remain under the sovereignty of the Republic of Nicaragua.

III. The Mosquito Indians within the district designated in the preceding article shall enjoy the right of governing according to their own customs, and according to any regulations which may from time to time be adopted by them, not inconsistent with the sovereign rights of the Republic of Nicaragua, themselves, and all persons residing within such district. Subject to the above-mentioned reserve, the Republic of Nicaragua agrees to respect and not to interfere with such customs and regulations so established or to be established within the said district.

IV. It is understood, however, that nothing in this treaty shall be construed to prevent the Mosquito Indians at any future time from agreeing to absolute incorporation into the Republic of Nicaragua on the same footing as other citizens of the republic, and from subjecting themselves to be governed by the general laws and regulations of the republic instead of by their customs and regulations.

V. The Republic of Nicaragua, being desirous of promoting the social improvement of the Mosquito Indians, and of providing for the maintenance of the authorities to be constituted under the provisions of Article III of this treaty, in the district assigned to the said Indians, agrees to grant to the said authorities, for the space of 10 years, with a view to such purposes, an annual sum of 5,000 hard dollars. The said sum shall be paid at Greytown, by half-yearly payments, to such persons as may be authorized by the chief of the Mosquito Indians to receive the same, and the first payment shall be made 6 months after the exchange of the ratifications of the present treaty.

For the payment of this sum Nicaragua will levy and especially consign a duty, to be levied according to weight, on all packages of goods that are imported into that port for consumption in the territory of the republic; and in case this duty shall not suffice for the payment of said sum, the deficit shall be made up from the other duties levied in the republic.

VI. Her Britannic Majesty engages to use her good offices with the chief of the Mosquito Indians, so that he shall accept the stipulations which are contained in this convention.

VII. The Republic of Nicaragua shall constitute and declare the port of Greytown, or San Juan del Norte, a free port under the sovereign authority of the republic. But the Republic, taking into consideration the immunities heretofore enjoyed by the inhabitants of Greytown, consents that trial by jury in all cases, civil or criminal, and perfect freedom of religious belief and worship, public and private, such as has hitherto been enjoyed by them up to the present moment, shall be guaranteed to them for the future.

No duties or charges shall be imposed upon vessels arriving in or departing from the free port of Greytown, other than such as may be sufficient for the due maintenance and safety of the navigation, for providing lights and beacons, and for defraying the expense of the police of the port; neither shall any duties or charges be levied in the free port on goods arriving therein, in transit from sea to sea. But nothing contained in this article shall be construed to prevent the Republic of Nicaragua from levying the usual duties on goods destined for consumption within the territory of the republic.

VIII. All *bona fide* grants of land for due consideration, made in the

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name and by the authority of the Mosquito Indians since the 1st of January, 1848, and lying beyond the limits of the territory reserved for the said Indians, shall be confirmed, provided the same shall not exceed in any case the extent of 100 yards square, if within the limits of San Juan or Greytown, or one league square if without the same, and provided that such grant shall not interfere with other legal grants made previously to that date by Spain, the Republic of Central America, or Nicaragua; and provided further, that no such grant shall include territory desired by the government of the latter state for forts, arsenals, or other public buildings. This stipulation only embraces those grants of land made since the 1st of January, 1848.

In case, however, any of the grants referred to in the preceding paragraph of this article should be found to exceed the stipulated extent, the commissioners hereinafter mentioned shall, if satisfied of the *bona fides* of any such grants, confirm to the grantee or grantees, or to his or their representatives or assigns, an area only equal to the stipulated extent.

And in case any *bona fide* grant, or any part thereof, should be desired by the government for forts, arsenals, or other public buildings, an equivalent extent of land shall be allotted to the grantees elsewhere.

*It is understood that the grants of land treated of in this article shall not extend to the westward of the territory reserved for the Mosquito Indians in Article II further than 84° 30′ of longitude, in a line parallel and equal with that of said territory on the same side; and if it should appear that any grants have been made further in the interior of the republic, the lands acquired *bona fide* shall be replaced with those that are within the limits defined under the regulations agreed upon.

IX. Her Britannic Majesty and the Republic of Nicaragua shall, within 6 months after the exchange of the ratifications of the present treaty, appoint each a commissioner for the purpose of deciding upon the *bona fides* of all grants of land mentioned in the preceding article as having been made by the Mosquito Indians of lands heretofore possessed by them, and lying beyond the limits of the territory described in Article I.

X. The commissioners mentioned in the preceding article shall, at the earliest convenient period after they shall have been respectively named, meet at such place or places as shall be hereafter fixed; and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, without fear, favor, or affection to their own country, all the matters referred to them for their decision; and such declaration shall be entered on the record of their proceedings.

The commissioners shall then, and before proceeding to any other business, name some third person to act as arbitrator or umpire in any case or cases in which they may themselves differ in opinion. If they should not be able to agree upon the selection of such a person, the commissioner on either side shall name a person, and in each and every case in which the commissioners may differ in opinion as to the decision which they ought to give, it shall be determined by lot which of the two persons so named shall be arbitrator or umpire in that particular case. The person or persons so to be chosen shall, before proceeding to act, make and subscribe a solemn declaration, in a form similar to that which shall already have been made and subscribed by the commissioners, which declaration shall also be entered on the record of the proceedings.

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* See declaration, August 2d, 1860, page 154.

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In the event of the death, absence, or incapacity of such person or persons, or of his or their omitting, or declining, or ceasing to act as such arbitrator or umpire, another person or other persons shall be named as aforesaid to act in his or their place or stead, and shall make and subscribe such declaration as aforesaid.

Her Britannic Majesty and the Republic of Nicaragua shall engage to consider the decision of the two commissioners conjointly, or of the arbitrator or umpire, as the case may be, as final and conclusive on the matters to be referred to their decision, and forthwith to give full effect to the same.

XI. The commissioners and the arbitrators or umpires shall keep accurate records and correct minutes or notes of all their proceedings, with the dates thereof, and shall appoint and employ such clerk or clerks, or other persons, as they shall find necessary to assist them in the transaction of the business which may come before them.

The salaries of the commissioners and of the clerk or clerks shall be paid by their respective governments.

The salary of the arbitrators or umpires and their contingent expenses shall be defrayed in equal moieties by the two governments.

XII. The present Treaty shall be ratified by Her Britannic Majesty, and by the Congress of the Republic of Nicaragua, and the ratifications shall be exchanged at London as soon as possible within the space of six months.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto their respective seals.

Done at Managua, this 28th day of January, in the year of our Lord 1860.

[L. S.] CHARLES LENNOX WYKE.
[L. S.] PEDRO ZELEDON.

DECLARATION.

In proceeding to the exchange of the ratifications of the Treaty concluded and signed at Managua on the 28 of January, 1860, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the Republic of Nicaragua, relative to the Mosquito Indians and to the rights and claims of British subjects, the undersigned, Her Britannic Majesty's principal Secretary of State for Foreign Affairs, and the Envoy Extraordinary and Minister Plenitotentiary of the Republic of Nicaragua, hereby declare that the limitation laid down in the paragraph added by the Congress of the Republic to Article VIII* of the said Treaty applies to grants of land to the west of the meridian of 84° 30′ of longitude throughout the whole extent of the territory hitherto occupied or claimed by the Mosquito Indians within the frontier of the Republic, but not to grants in any part of the said territory to the east of that meridian line.

In witness whereof the undersigned have signed the present declaration, and have affixed thereto their respective seals.

Done at London, the 2d day of August, in the year of our Lord 1860.

[L. S.] J. RUSSELL.
[L. S.] J. DE MARCOLETA.

* Page 153.

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62.—*President Buchanan's message to Congress December 3, 1860.*

[Extract.]

The discordant constructions of the Clayton and Bulwer treaty between the two governments, which, at different periods of the discussion, bore a threatening aspect, have resulted in a final settlement entirely satisfactory to this government.

In my last annual message I informed Congress that the British Government had not then

> Completed treaty arrangements with the Republics of Honduras and Nicaragua in pursuance of the understanding between the two governments. It is, nevertheless, confidently expected that this good work will ere long be accomplished.

This confident expectation has since been fulfilled. Her Britannic Majesty concluded a treaty with Honduras on the 28th November, 1859, and with Nicaragua on the 28th August, 1860, relinquishing the Mosquito protectorate. Besides, by the former the Bay Islands are recognized as a part of the Republic of Honduras. It may be observed that the stipulations of these treaties conform in every important particular to the amendments adopted by the Senate of the United States to the treaty concluded at London on the 17th October, 1856, between the two governments. It will be recollected that this treaty was rejected by the British Government because of its objection to the just and important amendment of the Senate to the article relating to Ruatan and the other islands in the Bay of Honduras.

63.—*Mr. Seward to Mr. Adams.*

No. 1745.] DEPARTMENT OF STATE,
Washington, April 25, 1866.

SIR: Towards the close of Mr. Polk's administration the British Government, disturbed, perhaps, by the recent acquisition of territory by the United States on the Pacific, showed what we thought to be a disposition to contend with the governments of the Central American states, with the ultimate object, as was supposed, of acquiring dominion there, and also a control of any ship-canal which might be made between the two oceans by the way of the San Juan River and Lake Nicaragua. British subjects had long before that time lent those governments money, the interest on which was in arrears, chiefly in consequence of the strife between the states which ensued upon their separation and as a confederacy.

War measures were determined upon to recover this interest; among others, the seizure of the island of Tiger, belonging to Honduras, in the Bay of Fonseca, was made by a British naval force in October, 1849. This seizure was protested against by Mr. Squier, the United States chargé d'affaires in Nicaragua, and a disavowal of the proceedings by the British Government was required by Mr. Clayton in an instruction to Mr. Abbott Lawrence, at London, of the 29th of December, 1849.

Insomuch as one route (by some supposed the best route) for the ship-canal from the lake to the Pacific lay along the Estero Real, which empties into the Bay of Fonseca, near Tiger Island, Mr. Squier deemed himself warranted in incorporating in a general commercial treaty with

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Honduras, which he signed on the 28th of September, 1849, provisions for acquiring land for naval stations on that island or on the continent in its vicinity. By what is called a protocol, of the same date, Honduras ceded Tiger Island to the United States, pending the ratification or rejection of the general treaty, provided that the time should exceed eighteen months.

These stipulations were entered into by Mr. Squier without instructions from the Department, and when the treaty and additional articles were received, he was reproved for them. They were never laid before the Senate. It is not to be doubted, however, that they occasioned uneasiness to the British Government, and in a great degree led to the Clayton-Bulwer treaty of the 19th of April, 1850.

The preamble of that treaty states that its object was to fix the views and intentions of the parties in regard to the ship canal.

The first article of the treaty, still referring to the ship-canal, stipulates that neither party will erect fortifications commanding the same, or in the vicinity thereof, or occupy, or fortify, or colonize, or assume or exercise dominion in any part of Central America.

It seems obvious that the renunciation by the parties to this instrument of a right to acquire dominion in Central America was intended to prevent either of them from obtaining control over the proposed ship-canal. At the time the treaty was concluded there was every prospect that that work would not only soon be begun, but that it would be carried to a successful conclusion. For reasons, however, which it is not necessary to specify, it never was even commenced, and at present there does not appear to be a likelihood of its being undertaken. It may be a question, therefore, supposing that the canal should never be begun, whether the renunciatory clauses of the treaty are to have perpetual operation.

Technically speaking, this question might be decided in the negative. Still, so long as it should remain a question, it would not comport with good faith for either party to do anything which might be deemed contrary to even the spirit of the treaty.

It is becoming more and more certain every day that not only naval warfare in the future, but also all navigation of war vessels in time of peace must be by steam. This necessity will occasion little or no inconvenience to the principal maritime powers of Europe, and especially to Great Britain, as those powers have possessions in various parts of the globe where they can have stores of coal and provisions for the use of their vessels. We are differently situated. We have no possession beyond the limits of the United States. Foreign colonization has never been favored by statesmen in this country either on general grounds or as in harmony with our peculiar condition. There is no change or likely to be any in this respect. It is indispensable for us, however, to have coaling stations under our own flag for naval observation and police, and for defensive war as well as for the protection of our widely spread commerce when we are at peace ourselves. This want, even for our commercial marine, is nowhere more sensibly felt than on the track between Panama and San Francisco. The question then occurs what points beyond our jurisdiction would be most eligible for this purpose?

Whatever opinion might be entertained in regard to any other sites, there would be no question that Tiger Island would be exceedingly desirable for that purpose.

Under these circumstances, you will sound Lord Clarendon as to the disposition of his government to favor us in acquiring coaling stations in Central America, notwithstanding the stipulation contained in the

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Clayton-Bulwer treaty. In doing this, however, you will use general terms only, and will by no means allow it to be supposed that we particularly covet Tiger Island. You will execute this instruction at such time and in such way as to you may seem best, and inform the Department of the result, so that the United States minister to Honduras may be directed to proceed accordingly.

It is supposed that you may probably be able to introduce the subject to the Earl of Clarendon's attention by suggesting that a negotiation with a view to the special end mentioned might be made an element in a general negotiation for settlement of the northwest-boundary question and of the conflicting claims of the two countries which have arisen during the late rebellion in the United States.

I am, &c.,

WILLIAM H. SEWARD.

64.—*Extract from the report of Mr. Fish, Secretary of State, accompanying President Grant's message to the Senate of July 14, 1870.*

DEPARTMENT OF STATE,
Washington, July 14, 1870.

* * * * * * *

The avoidance of entangling alliances, the characteristic feature of the foreign policy of Washington, sprang from this condition of things. But the entangling alliances which then existed were engagements made with France as a part of the general contract under which aid was furnished to us for the achievement of our independence. France was willing to waive the letter of the obligation as to her West India possessions, but demanded, in its stead, privileges in our ports which the administration was unwilling to concede. To make its refusal acceptable to a public which sympathized with France, the cabinet of General Washington exaggerated the principle into a theory tending to national isolation.

The public measures designed to maintain unimpaired the domestic sovereignty and the international neutrality of the United States were independent of this policy, though apparently incidental to it. The municipal laws enacted by Congress then and since have been but declarations of the law of nations. They are essential to the preservation of our national dignity and honor; they have for their object to repress and punish all enterprises of private war, one of the last relics of mediæval barbarism; and they have descended to us from the fathers of the republic, supported and enforced by every succeeding President of the United States.

The foreign policy of these early days was not a narrow one. During this period we secured the evacuation by Great Britain of the country wrongfully occupied by her on the lake; we acquired Louisiana; we measured forces on the sea with France, and on the land and sea with England; we set the example of resisting and chastising the piracies of the Barbary States; we initiated in negotiations with Prussia the long line of treaties for the liberalization of war and the promotion of international intercourse; and we steadily demanded, and at length obtained, indemnification from various governments for the losses we had suffered by foreign spoliations in the wars of Europe.

To this point in our foreign policy we had arrived when the revolu-

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tionary movements in Spanish and Portuguese America compelled a modification of our relations with Europe, in consequence of the rise of new and independent states in America.

The revolution, which commenced in 1810 and extended through all the Spanish-American continental colonies, after vain efforts of repression on the part of Spain, protracted through twenty years, terminated in the establishment of the independent states of Mexico, Guatemala, San Salvador, Honduras, Nicaragua, Costa Rica, Venezuela, Colombia, Ecuador, Peru, Chili, Bolivia, the Argentine Republic, Uruguay, and Paraguay, to which the Empire of Brazil came in time to be added. These events necessarily enlarged the sphere of action of the United States, and essentially modified our relations with Europe, and our attitude to the rest of this continent.

The new states were, like ourselves, revolted colonies. They continued the precedent we had set, of separating from Europe. Their assumption of independence was stimulated by our example. They professedly imitated us, and copied our national Constitution, sometimes even to their inconvenience.

The Spanish-American colonies had not the same preparation for independence that we had. Each of the British colonies possessed complete local autonomy. Its formal transition from dependence to independence consisted chiefly in expelling the British governor of the colony, and electing a governor of the State, from which to the organized Union was but a step. All these conditions of success were wanting in Spanish America, and hence many of the difficulties in their career as independent states; and further, while the revolution in British America was the exclusive result of the march of opinion in the British colonies, the simultaneous action of the separate Spanish colonies, though showing a desire for independence, was principally produced by the accident of the invasion of Spain by France.

The formation of these new sovereignties in America was important to us, not only because of the cessation of colonial monopolies to that extent, but because of the geographical relations to us, held by so many new nations, all, like ourselves, created from European stock, and interested in excluding European politics, dynastic questions, and balances of power from further influence in the New World.

Thus the United States were forced into new lines of action, which, though apparently in some respects conflicting, were really in harmony with the line marked out by Washington. The avoidance of entangling political alliances, and the maintenance of our own independent neutrality became doubly important from the fact that they became applicable to the new republics as well as to the mother country. The duty of non-interference had been admitted by every President. The question came up in the time of the first Adams, on the occasion of the enlistment projects of Miranda. It appeared again under Jefferson (anterior to the revolt of the Spanish colonies) in the schemes of Aaron Burr. It was an ever-present question in the administrations of Madisons, Monroe, and the younger Adams, in reference to the questions of foreign enlistment or equipment in the United States, and when these new republics entered the family of nations, many of them very feeble, and all too much subject to internal revolution and civil war, a strict adherence to our previous policy and a strict enforcement of our laws became essential to the preservation of friendly relations with them; for, since that time, it has been one of the principal cares of those intrusted with the administration of the government, to prevent piratical expeditions against these sister republics from leaving our ports. And thus the

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changed condition of the New World made no change in the traditional and peaceful policy of the United States in this respect.

In one respect, however, the advent of these new states in America did compel an apparent change of foreign policy on our part. It devolved upon us the determination of the great international question, at what time, and under what circumstances, to recognize a new power as entitled to a place among the family of nations. There was but little of precedent to guide us, except our own case. Something, indeed, could be inferred from the historical origin of the Netherlands and Switzerland. But our own case, carefully and conscientiously considered, was sufficient to guide us to right conclusions. We maintained our position of international friendship and of treaty obligations toward Spain, but we did not consider that we were bound to wait for its recognition of the new republics before admitting them into treaty relations with us as sovereign States. We held that it was for us to judge whether or not they had attained to the condition of actual independence, and the consequent right of recognition by us. We considered this question of fact deliberately and coolly. We sent commissioners to Spanish America to ascertain and report for our information concerning their actual circumstances, and in the fullness of time we acknowledged their independence; we exchanged diplomatic ministers, and made treaties of amity with them, the earliest of which, negotiated by Mr. John Quincy Adams, served as the model for the subsequent treaties with the Spanish-American republics. We also, simultaneously therewith, exerted our good offices with Spain, to induce her to submit to the inevitable result, and herself to accept and acknowledge the independence of her late colonies. We endeavored to induce Russia to join us in these representations. In all this our action was positive, in the direction of promoting the complete political separation of America from Europe.

A vast field was thus opened to the statesmen of the United States for the peaceful introduction, the spread, and the permanent establishment of the American ideas of republican government, of modification of the laws of war, of liberalization of commerce, of religious freedom and toleration, and of the emancipation of the New World from the dynastic and balance of power controversies of Europe.

Mr. John Quincy Adams, beyond any other statesman of the time in this country, had the knowledge and experience, both European and American, the comprehension of thought and purpose, and the moral convictions which peculiarly fitted him to introduce our country into this new field, and to lay the foundation of an American policy. The declaration known as the Monroe doctrine, and the objects and purposes of the congress of Panama, both supposed to have been largely inspired by Mr. Adams, have influenced public events from that day to this, as a principle of government for this continent and its adjacent islands.

It was at the period of the congress of Aix-la-Chapelle and of Laybach, when the "holy alliance" was combined to arrest all political changes in Europe in the sense of liberty, when they were intervening in Southern Europe for the re-establishment of absolutism, and when they were meditating interference to check the progress of free government in America, that Mr. Monroe, in his annual message of December, 1823, declared that the United States would consider any attempt to extend the European system to any portion of this hemisphere as dangerous to our peace and safety. "With the existing colonies or dependencies of any European power," he said, "we have not interfered and

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shall not interfere. But with the governments who have declared their independence, and maintained it, and whose independence we have on great consideration and on just principles acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling, in any other manner, their destiny, by any European power, in any other light than as the manifestation of an unfriendly feeling towards the United States."

This declaration resolved the solution of the immediate question of the independence of the Spanish-American colonies, and is supposed to have exercised some influence upon the course of the British cabinet in regard to the absolutist schemes in Europe as well as in America.

It has also exercised a permanent influence on this continent. It was at once invoked in consequence of the supposed peril of Cuba on the side of Europe; it was applied to a similar danger threatening Yucatan; it was embodied in the treaty of the United States and Great Britain as to Central America; it produced the successful opposition of the United States to the attempt of Great Britain to exercise dominion in Nicaragua under the cover of the Mosquito Indians; and it operated in like manner to prevent the establishment of a European dynasty in Mexico.

The United States stand solemnly committed by repeated declarations and repeated acts to this doctrine, and its application to the affairs of this continent. In his message to the two houses of Congress at the commencement of the present session, the President, following the teachings of all our history, said that the existing "dependencies are no longer regarded as subject to transfer from one European power to another. When the present relation of colonies ceases, they are to become independent powers, exercising the right of choice and of self-control in the determination of their future condition and relations with other powers."

This policy is not a policy of aggression; but it opposes the creation of European dominion on American soil, or its transfer to other European powers, and it looks hopefully to the time when, by the voluntary departure of European governments from this continent and the adjacent islands, America shall be wholly American.

It does not contemplate forcible intervention in any legitimate contest; but it protests against permitting such a contest to result in the increase of European power or influence; and it ever impels this government, as in the late contest between the South American republics and Spain, to interpose its good offices to secure an honorable peace.

The congress of Panama was planned by Bolivar to secure the union of Spanish America against Spain. It had originally military as well as political purposes. In the military objects the United States could take no part; and indeed the necessity for such objects ceased when the full effects of Mr. Monroe's declarations were felt. But the pacific objects of the Congress, the establishment of close and cordial relations of amity, the creation of commercial intercourse, of interchange of political thought, and of habits of good understanding between the new republics and the United States and their respective citizens, might perhaps have been attained, had the administration of that day received the united support of the country. Unhappily they were lost; the new states were removed from the sympathetic and protecting influence of our example, and their commerce, which we might then have secured, passed into other hands, unfriendly to the United States.

In looking back upon the Panama congress from this length of time, it is easy to understand why the earnest and patriotic men who endeavored to crystallize an American system for this continent failed.

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Mr. Clay and Mr. Adams were far-sighted statesmen, but unfortunately they struck against the rock of African slavery. One of the questions proposed for discussion in the conference was "The consideration of the means to be adopted for the entire abolition of the African slave trade," to which proposition the committee of the United States Senate of that day replied, "The United States have not certainly the right, and ought never to feel the inclination, to dictate to others who may differ with them upon this subject, nor do the committee see the expediency of insulting other states, with whom we are maintaining relations of perfect amity, by ascending the moral chair, and proclaiming from thence mere abstract principles, of the rectitude of which each nation enjoys the perfect right of deciding for itself." The same committee also alluded to the possibility that the condition of the islands of Cuba and Porto Rico, still the possessions of Spain, and still slaveholding, might be made the subject of discussion and of contemplated action by the Panama congress. "If ever the United States [they said] permit themselves to be associated with these nations in any general congress assembled for the discussion of common plans in any way affecting European interests, they will, by such act, not only deprive themselves of the ability they now possess of rendering useful assistance to the other American states, but also produce other effects prejudicial to their own interests."

Thus the necessity at that day of preserving the great interest of the Southern States in African slavery, and of preventing a change in the character of labor in the islands of Cuba and Porto Rico, lost to the United States the opportunity of giving a permanent direction to the political and commercial connections of the newly enfranchised Spanish-American states, and their trade passed into hands unfriendly to the United States, and has remained there ever since.

Events, subsequent to that date, have tended to place us in a position to retrieve our mistakes; among which events may be particularly named the suppression of the rebellion, the manifestation of our undeveloped and unexpected military power, the retirement of the French from Mexico, and the abolition of slavery in the United States.

There is good reason to believe that the latter fact has had an important influence in our favor in Spanish America. It has caused us to be regarded there with more sympathetic as well as more respectful consideration. It has relieved those republics from the fear of filibusterism which had been formerly incited against Central America and Mexico in the interest of slave extension; and it has produced an impression of the stability of our institutions and of our public strength sufficient to dissipate the fears of our friends or the hopes of those who wish us ill.

Thus there exists in the Spanish-American republics confidence oward the United States. On our side they find a feeling of cordiall amity and friendship, and a desire to cultivate and develop our common interests on this continent. With some of these states our relations are more intimate than with others, either by reason of closer similarity of constitutional forms, of greater commercial intercourse, of proximity in fact, or of the construction or contemplated construction of lines of transit for our trade and commerce between the Atlantic and the Pacific. With several of them we have peculiar treaty relations. The treaty of 1846 between the United States and New Grenada contains stipulations of guaranty for the neutrality of that part of the Isthmus within the present territory of Colombia, and for the protection of the rights of sovereignty and property therein belonging to Colombia. Similar stip-

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ulations appear in the treaty of 1867 with Nicaragua, and of July, 1864, with Honduras. Those treaties (like the treaty of alliance made with France in 1778 by Dr. Franklin, Silas Deane, and Arthur Lee) constitute *pro tanto* a true protective alliance between the United States and each of those republics. Provisions of like effect appear in the treaty of April 19, 1850, between Great Britain and the United States.

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65.—*Mr. Fish to General Schenck.*

No. 375.] DEPARTMENT OF STATE,
Washington, April 26, 1873.

SIR: You are aware that a main object of the Clayton-Bulwer treaty, so called, of the 19th of April, 1850, was to provide against obstruction by either party to a ship-canal to the Pacific through Nicaragua. A work of that kind was then deemed specially necessary and desirable for us, as California had recently been acquired, the only practicable way to which was across the Isthmus of Panama, or around Cape Horn. For some time previously to date of that instrument, and especially during the considerable period when the United States were without a diplomatic representative in Central America, it seemed to be the policy of the British Government to avail itself of what was called its protectorate of the King of Mosquitos to wrest from Nicaragua that part of its territory claimed on behalf of that Indian chief, including, of course, the mouths of the San Juan River, by the way of which it was supposed the proposed ship-canal must pass. The Clayton-Bulwer treaty effectually checked this pretension. It also, in terms, forbade either party to occupy or fortify in any part of Central America. The British Government, probably actuated by an apprehension that this stipulation might be construed against their claims at Belize, Honduras, instructed Sir H. L. Bulwer to make the declaration of 29th of June, 1850, when the ratifications were to be exchanged, to the effect that they did not understand the engagements of the convention to apply to Belize and its dependencies. In a note to Sir Henry of the 4th of July, 1850, Mr. Clayton acknowledged that it was not the purpose of the convention to apply to Belize and its dependencies.

A similar acknowledgment is contained in a memorandum of the 5th of July, 1850, signed by Mr. Clayton, which says that he at the same time declined to affirm or deny the British title in their settlement or its alleged dependencies. Among the latter what are called the Bay Islands were claimed to belong. The British Government, however, having converted them into a separate colony, this and the continuance of its protectorate, so called, over the Mosquito Indians, were regarded as virtually such breaches of the Clayton-Bulwer treaty as to call for the remonstrances which Mr. Buchanan, and subsequently Mr. Dallas, were instructed to address, and which they did address, to that government. The answer of that government was in substance that the Clayton-Bulwer treaty was merely designed to provide for the future, and was not intended to affect any rights or claims which Great Britain may have had in Central America at the time of its conclusion. This pretension was effectually answered by Mr. Buchanan in his reply to Lord Clarendon's memorandum on the subject, which you will find on the file or record of your legation. Ultimately, on the 17th of October, 1856, a treaty which is called the Dallas-Clarendon treaty was signed at London. The object of this instrument was to compose the differences between the two

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governments, especially in regard to the Bay Islands and the Mosquito protectorate. When the treaty reached here it must have been obvious to the Executive, that if it accomplished either of those purposes, it was in an incomplete and unacceptable way. Still the treaty was laid before the Senate, which body, though it did not absolutely reject it, appended to it so many and such important amendments that they were not accepted by the British Government, and the whole business proved abortive.

The British Government then sought negotiations with Nicaragua, Guatemala, and Honduras, separately, to attain the principal objects which it hoped to compass by means of the Dallas-Clarendon treaty, if it had gone into effect as it was signed.

The purposes of that government were in the main accomplished. On the 28th of January, 1860, a treaty between Great Britain and Nicaragua was signed at Managua. Though this instrument restored to that republic the nominal sovereignty over that part of its territory which had previously been claimed as belonging to the kingdom of the Mosquitos, it assigned boundaries to the Mosquito Reservation probably beyond the limits which any member of that tribe had ever seen, even when in chase of wild animals. Worst of all, however, it confirmed the grants of land previously made in Mosquito territory. The similar stipulation on this subject in the Dallas-Clarendon treaty was perhaps the most objectionable of any, as it violated the cardinal rule of all European colonists in America, including Great Britain herself, that the aborigines had no title to the soil which they could confer upon individuals.

This rule has repeatedly been confirmed by judicial decisions, and especially by the Supreme Court of the United States. It is supposed to be superfluous to add that it is understood the grantees of the Mosquito chief, respecting whose interests the British Government was so solicitous, were the subjects of the latter.

It is supposed that the expedition of Walker to Nicaragua made such an unfavorable impression on public opinion there, in respect to this country, as to prepare the way for the treaty with Great Britain. A rumor was current in that quarter, and was by many believed to be true, that Walker was an agent of this government, which, it was supposed, had covertly sent him thither to obtain control of the country. This, however, was so far from the truth that everything within its power was done by this government towards preventing the departure of Walker.

Besides the treaty with Nicaragua, just adverted to, there was a treaty between Great Britain and Honduras, signed on the 28th November, 1859, the main object of which was the restitution to the latter of the Bay Islands, which had for some time before been converted into a British colony.

This treaty also contained stipulations in regard to Mosquito Indians in Honduras territory similar to that in the treaty with Nicaragua.

On the 30th of April, 1859, a treaty between Great Britain and Guatemala was also signed, by which the boundaries of the British settlement at Belize, so called, were extended to the Sarstoon River. This instrument contained provisions for the appointment of commissioners to mark the boundaries, and for the construction of a road from Guatemala to the fittest place on the Atlantic coast near Belize. By a supplementary convention between the parties, of the 5th of August, 1863, Great Britain agreed, upon certain conditions, to contribute fifty thousand pounds sterling towards the construction of the road referred to.

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From the note of the 4th of December last, addressed to this department by M. Dardon, the minister of Guatemala here, it appears that when the joint commission for running the boundary line reached the Sarstoon River the British commissioner, finding that his countrymen were trespassing beyond that limit, refused to proceed, and the stipulation on the subject, if not virtually canceled, has, at least, been suspended.

The supplementary convention not having been ratified by Guatemala in season, it is stated that the British Government has notified that of Guatemala that it would regard the stipulation on the subject of the road contained in the treaty of 1859 as at an end.

Other important information on these subjects is contained in the letter and its accompaniments of Mr. Henry Savage, to this department of the 16th of October last. He is a native of this country and at one time was consul at Guatemala.

He has frequently, in the absence of a diplomatic agent of the United States in that quarter, furnished this department with valuable information in regard to Central American affairs.

Mr. Dardon says that his government also regards its treaty of 1859 with Great Britain at an end, and requests on its behalf the co-operation and support of this government towards preventing further encroachments by British subjects on the territory of Guatemala. It is believed that if such encroachments are authorized or countenanced by that government it will be tantamount to a breach of its engagement not to occupy any part of Central America. Before, however, officially mentioning the subject to Earl Granville, it would be advisable to ascertain the correctness of the representation of Mr. Dardon, as to the cause of the discontinuance of the demarkation of the boundary.

If the statement of that gentleman should prove to be correct, you will then formally remonstrate against any trespass by British subjects, with the connivance of their government, upon the territory of Guatemala, as an infringement of the Clayton-Bulwer treaty which will be very unacceptable in this country.

I am, &c.,

HAMILTON FISH.

66.—*Message of President Hayes to Congress, March 8, 1880.*

[Extract.]

The policy of this country is a canal under American control. The United States cannot consent to the surrender of this control to any European power, or to any combination of European powers. If existing treaties between the United States and other nations, or if the rights of sovereignty or property of other nations stand in the way of this policy—a contingency which is not apprehended—suitable steps should be taken by just and liberal negotiations to promote and establish the American policy on this subject, consistently with the rights of the nations to be affected by it.

The capital invested by corporations or citizens of other countries in such an enterprise must, in a great degree, look for protection to one or more of the great powers of the world. No European power can intervene for such protection, without adopting measures on this continent which the United States would deem wholly inadmissible. If the protection of the United States is relied upon, the United States must ex-

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ercise such control as will enable this country to protect its national interests and maintain the rights of those whose private capital is embarked in the work.

An interoceanic canal across the American Isthmus will essentially change the geographical relations between the Atlantic and Pacific coasts of the United States, and between the United States and the rest of the world. It will be the great ocean thoroughfare between our Atlantic and our Pacific shores, and virtually a part of the coast line of the United States. Our merely commercial interest in it is greater than that of all other countries, while its relations to our power and prosperity as a nation, to our means of defense, our unity, peace, and safety, are matters of paramount concern to the people of the United States. No other great power would, under similar circumstances, fail to assert a rightful control over a work so closely and vitally affecting its interest and welfare.

Without urging further the grounds of my opinion, I repeat, in conclusion, that it is the right and the duty of the United States to assert and maintain such supervision and authority over any interoceanic canal across the isthmus that connects North and South America as will protect our national interests. This I am quite sure will be found not only compatible with, but promotive of, the widest and most permanent advantage to commerce and civilization.

67.—*Extract from the report of Mr. Evarts, Secretary of State, accompanying President Hayes's message (No. 66) and the Wyse concession for the Panama Canal, which it inclosed.*

The recent contract or concession made by the Government of Colombia with an association of foreign projectors, the text of which is herewith annexed (inclosure No. 5), brings to attention some considerations of more or less practical importance, according as we may estimate the feasibility of the project and the financial prospects of the projectors. It does, however, present an occasion for a deliberate indication by the Government of the United States of its relations to enterprises of this nature, both in its position as an American power, and under its specific treaty rights and obligations towards the United States of Colombia.

In the mere aspect of a contribution of capital, in the motive of profit to the investors, on the one part, and of a proprietary administration by Colombia of the transit through its territory as a source of legitimate revenue and local prosperity, the proposed canal might seem to fall within the ordinary conditions of pecuniary enterprise and internal development, which the general interests of commerce favor, and which it has been the policy of this government to stimulate and assist.

But this view of the subject is quite too narrow and too superficial. It overlooks the direct relations of the other American nations to the contemplated change in the route of water-borne commerce, and the indirect but equally weighty considerations by which the relations of the American nations to the great powers of Europe will be modified by this change. It does not penetrate the formal character of the contract as between private capital and local administration, and appreciate its real and far-reaching operation upon the commercial and political interests of the American continent.

The United States, therefore, as the great commercial and political power of America, becomes, necessarily, a principal party to any project

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which shall exhibit such solidity and proportions as to distinguish it from the unsubstantial and illusory schemes which have, from time to time, proposed to solve the problem of interoceanic transit. The question involved presents itself distinctly to this government as a territorial one, in the administration of which, as such, it must exercise a potential control.

While this attitude of the United States to the political and commercial problem of an interoceanic canal, at whatever point, would seem to attach to their position on the continent, the particular rights and obligations in reference to any transit across the Isthmus of Panama, which grow out of the mutual engagements of the treaty with Colombia, fix more definitely the interests of this government in any material changes of that isthmus as the theater of these rights and obligations.

It is manifest that so stupendous a change from the natural configuration of this hemisphere as transforms the Isthmus of Panama from being a barrier between the Atlantic and Pacific Oceans into a gateway and thoroughfare between them for the navies and merchant ships of the world bears directly upon the weight and burden of our guarantees under that treaty. It is equally manifest, and only less important, that the organization and nationality of an immense capital and the administration of a great and growing force of managers and laborers, and the throng of population likely to attend the prosperity of the enterprise, affect essentially the conditions under which the United States may be called upon to perform the engagements of that treaty. The guarantee of the neutrality of the transit and of the sovereignty and property of Colombia in the isthmus are one thing while the isthmus remains in its natural and unpeopled state, and quite another when it shall have been opened to the interests, the cupidities, and the ambitions of the great commercial nations, and occupied by populations of foreign allegiance and discordant habits.

So obvious are these propositions that it may well be assumed that no contract or negotiations could ever be entered into between private projectors and the Government of Colombia except in contemplation of this position of the United States under the treaty, and of the necessity that both the private interests and the public engagements involved, in reliance upon the power and faith of this government for their protection, must be conformed to its rightful participation and control in any arrangements that may seriously affect the discharge of its stipulated responsibilities.

[Inclosure in No. 67.—Translation from the Diario Oficial of Bogota, Wednesday, May 22, 1878.]

Law 28th of 1878 (18th of May) "approving the contract for the construction of an interoceanic canal across Colombian territory."

The Congress of the United States of Colombia, after an examination of the contract, which is verbatim as follows:

CONTRACT FOR THE CONSTRUCTION OF AN INTEROCEANIC CANAL ACROSS COLOMBIAN TERRITORY.

Eustorgio Salgar, secretary of the interior and of foreign relations of the United States of Colombia, duly authorized, of the one part, and of the other part Lucien N. B. Wyse, chief of the Isthmus Scientific Surveying Expedition in 1876, 1877, and 1878, member and delegate of the board of directors of the International Interoceanic Canal Association, presided by General Etienne Türr, in conformity with powers bestowed at Paris, from the 27th to the 29th of October, 1877, have celebrated the following contract:

ARTICLE 1.* The Government of the United States of Colombia grants to Mr. Lucien

*This article modified by Colombian Congress. See decree which follows.

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N. B. Wyse, who accepts it in the name of the civil International Interoceanic Canal Association, represented by their board of directors, the exclusive privilege for the construction across its territory, and for the operating of a canal between the Atlantic and Pacific Oceans. Said canal may be constructed without restrictive stipulations of any kind.

This concession is made under the following conditions:

1st. The duration of the privilege shall be for ninety-nine years from the day on which the canal shall be wholly or partially opened to public service, or when the grantees or their representatives commence to collect the dues on transit and navigation.

2d. From the date of approbation by the Colombian Congress for the opening of the interoceanic canal, the government of the republic cannot construct, nor concede to any company or individual, under any consideration whatever, the right to construct another canal across Colombian territory which shall communicate the two oceans. Should the grantees wish to construct a railroad as an auxiliary to the canal, the government (with the exception of existing rights) cannot grant to any other company or individual, the right to build another interoceanic railroad, nor do so, itself, during the time allowed for the construction and use of the canal.

3d. The necessary studies of the ground, and the route for the line of the canal, shall be made, at the expense of the grantees, by an international commission of individuals and competent engineers, in which two Colombian engineers shall take part. The commission shall determine the general route of the canal and report to the Colombian Government directly, or to its diplomatic agents in the United States or Europe, upon the results obtained, at the latest in 1881, unless unavoidable circumstances, clearly proven, should prevent their so doing. The report shall comprise in duplicate the scientific labors performed, and an estimate of the projected work.

4th. The grantees shall then have a period of two years to organize a universal joint stock company, which shall take charge of the enterprise, and of the construction of the canal. This term shall commence from the date mentioned in the preceding paragraph.

5th. The canal shall be finished and placed at the public service within the subsequent twelve years after the formation of the company which will undertake its construction, but the executive power is authorized to grant a further maximum term of six years in the case of encountering superhuman obstacles beyond the power of the company, and if, after one-third of the canal is built, the company should acknowledge the impossibility of concluding the work in the said twelve years.

6th. The canal shall have the length, depth, and all other conditions requisite in order that sailing vessels and steamships measuring up to 140 meters long, 16 meters in width, and 8 meters in draught shall, with lowered topmasts, be able to pass the canal.

7th. All public lands which may be required for the route of the canal, the ports, stations, wharves, moorings, warehouses, and in general for the construction and service of the canal as well as for the railway, should it be convenient to build it, shall be ceded gratis to the grantees.

8th. These unoccupied public lands shall revert to the government of the republic, with the railroad and canal, at the termination of this privilege; there is also granted for the use of the canal a belt of land two hundred meters wide on each side of its banks throughout all the distance which it may run, but the owners of lands on its banks shall have free access to the canal and its ports as well as to the right of use of any roads which the grantees may open there; and this without paying any dues to the company.

9th. If the lands through which the canal shall pass, or upon which the railroad may be built, should, in whole or in part, be private property, the grantee shall have the right to demand their expropriation by the government according to all the legal formalities in such cases. The indemnity which shall be made to the land owners, and which shall be based on their actual value, shall be at the expense of the company. The grantees shall enjoy in this case, and in those of temporary occupation of private property, all the rights and privileges which the existing legislation confers.

10th. The grantees may establish and operate at their cost the telegraphic lines which they may consider useful as auxiliaries in the building and management of the canal.

ART. 2.* Within the term of twelve months after the international commission shall have presented the result of their definite surveys, the grantees will deposit in the bank or banks of London, which the national executive power may designate, the sum of seven hundred and fifty thousand francs as security for the accomplishment of the work. The receipt of said bank or banks shall be a voucher of the fulfillment of said engagement. The deposit shall be made in certificates of the foreign debt of Colombia, at the current market price on the day of delivery. It is understood that should the grantees forfeit this deposit by virtue of the provisions of clause 2, article 22, of

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this contract, the said sum with its interest shall become the sole property of the Colombian Government. On the conclusion of the canal the amount deposited as security shall remain to the credit of the treasury as indemnity to the national government for the expenses incurred in the erection of buildings for the use of public offices.

ART. 3.* Should the route of the canal from one ocean to the other pass to the west and to the north of the imaginary straight line which connects Cape Tiburon with Garachine Point, the grantees must make a friendly arrangement with the Panama Railroad Company, or pay an indemnity which shall be determined in accordance with the provisions of law 46, of August 16, 1867, "which approves the contract celebrated July 5, 1867, reformatory of that of April 15, 1850, for the construction of a railroad from ocean to ocean, across the Isthmus of Panama."

In case the international commission selects the Atrato, or some other stream now navigable, as one of the entrances of the canal, the canalized mouth shall be considered as one of the parts of the principal work, and maintained in equally good condition. River navigation in the upper part of the stream, so far as it has not for its object the use of the canal, shall be open to commerce, and free from all dues.

ART. 4.* In addition to the lands granted by paragraphs 7 and 8 of article 1, there are gratuitously given to the grantees, and at their choice five hundred thousand hectares of the unoccupied public lands, with the mines which they may contain. This allotment shall be made directly by the national executive power. The public lands situated on the sea-coast, or on the border of the canal, or at the rivers, shall be divided as closely as possible in alternate lots between the government and the company, forming, if the ground will permit, areas of one and two thousand hectares. The measurement for the allotment or location shall be made at the cost of the grantees, and with the intervention of commissioners of the government.

Unoccupied lands so granted, with the mines which they may hold, shall be awarded to the grantees as soon as they request them after the deposit of the security. In a belt of two myriameters on each side of the canal, and during five years after the conclusion of the work, the government cannot transfer other lands beyond the said lots until the company shall have obtained the whole of the lands which are granted to it gratuitously.

ART. 5.* The government of the republic declares neutral, for all time, the ports of each terminus of the canal and the waters of the latter from one sea to the other, and consequently in case of war between other nations or between one or more of these and Colombia, the transit of the canal shall not be interrupted on that account, and the merchant vessels and individuals of all nations of the world may enter said ports, and navigate the canal without let or hinderance. In general any ship whatever may navigate the canal freely without discrimination, exclusion, or preference of persons or nationalities, by paying the dues and abiding by the regulations laid down by the company for the use of said canal and its dependencies. Exception is made of foreign troops, which cannot pass without permission from Congress.

ART. 6.* The entrance to the canal shall be rigorously prohibited to the war vessels of those nations which are at war with another or others, and whose destination manifests their intention to take part in hostilities.

ART. 7. The grantees will enjoy the right during the whole time of the privilege to use the ports at the termini of the canal, as well as intermediate points, for the anchorage and repair of ships, and the loading, depositing, transshipping, or landing of merchandise. The ports of the canal shall be open and free to the commerce of all nations, and no import duties shall be exacted except on merchandise destined to be introduced for the consumption of the rest of the republic. The said ports shall, therefore, be open to importations from the commencement of the work, and the custom-houses, and the revenue service which the government may deem convenient for the collection of duties on merchandise destined for other portions of the republic, shall be established, in order to prevent introduction of smuggled goods.

ART. 8.* The executive power shall issue the necessary regulations for the protection of its revenues by preventing smuggling, and shall appoint the number of men necessary for this service at its own expense. Of the employés indispensable for this, ten shall be paid by the company, and their salaries shall not exceed those paid to officials of the same grade in the custom-house at Barranquilla. When necessary, the company shall transport, free of charge, by the canal or by the auxiliary railroad, the men at the service of the union or destined for police duty, with the object of guarding public service without, or preserving public order within. If the company should not own ships or tugs, they shall pay the passage of these men across the isthmus. The sustenance of the public force necessary for the security of the interoceanic transit shall also be at the expense of the company.

ART. 9. The grantees shall have the right to introduce, free of import or other duties of whatever class, all the instruments, machinery, tools, fixtures, provisions, clothing for laborers, which they may need during all the time allowed to them for the con-

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struction and use of the canal. The ships carrying cargoes for the use of the enterprise shall enjoy free entry to whatever points shall affords them easy access to the line of the canal.

ART. 10. No taxes, either national, municipal, of the State, or of any other class, shall be levied upon the canal, the ships that navigate it, the tugs and vessels at the service of the grantees, their warehouses, work-shops, and offices, factories of whatever class, storehouses, wharves, machinery, or other works or property of whatever character belonging to them, and which they may need for the service of the canal and its dependencies, during the time conceded for its construction and operation. The grantees shall also have the right to take from unoccupied lands the materials of any kind which they may require without paying any compensation for the same.

ART. 11. The passengers, money, precious metals, merchandise, and articles and effects of all kinds which may be transported over the canal, shall also be exempt from all duties, national, municipal, transit and others. The same exemption is extended to all articles and merchandise for interior or exterior commerce which may remain in deposit, according to the conditions which may be stipulated, with the company in the storehouses and stations belonging to them.

ART. 12. Ships desiring to cross the canal shall present at the port of the terminus of the canal at which they may arrive, their respective registers and other sailing papers, prescribed by the laws and public treaties, so that the vessels may navigate without interruption. Vessels not having said papers, or which should refuse to present them, may be detained and proceeded against according to law.

ART. 13.* The government allows the immigration and free access to the lands and work-shops of the grantees of all employés and laborers, of whatever nationality, contracted for the enterprise, or who may come to engage themselves in the service of the canal, on condition that such employés or laborers submit to existing laws, and to the regulations established by the company. The government assures them aid and protection and the enjoyment of their rights and privileges, according to the constitution and laws of the nation, during the time they live in Colombian territory.

ART. 14.* As a compensation to the grantees for the expenses of the building, preservation and operation of the canal, which are for their account, they shall have the right during all the period of this privilege to charge and collect for passage over the canal, and the ports dependent upon it, dues for light-house, anchorage, transit, navigation, repairs, pilotage, towing, hauling, storage, and station, as per the tariff they may establish, and which may be modified at any time under the following express conditions:

1st. These dues shall be imposed without exception or favor upon all ships in identical conditions.

2d. The tariff shall be published four months before going into operation in the Diario Oficial of the government, as well as in the capitals and principal commercial ports of the countries affected thereby.

3d. The principal dues to be collected on vessels shall not exceed the rate of ten francs for each cubic meter, resulting from the multiplication of the principal dimensions of the submerged portion of the ship in transit (length, breadth, and draught).

4th. The principal dimensions of the ship in transit, that is to say, the greatest exterior length and beam of vessel, as well as the greatest draught of water, shall be nautical dimensions, inserted in the official clearance papers, with the exception of such modifications as may result in the course of the voyage. The captains of ships and agents of the company may require a new measurement to be taken, which operation shall be effected at the expense of the solicitor.

5th. The same measurement, that is to say, the parallelopiped described by the submerged part of the ship, shall serve as the basis for the determination of the other accessory charges.

6th. Special dues for navigation shall be reduced in proportion to the excess when the net profits derived therefrom shall exceed 12 per cent. of the capital employed in the enterprise.

ART. 15.* By way of compensation for the right and exemptions which are conferred upon the grantees by this contract, the government of the republic shall enjoy a participation equal to 5 per cent. of the gross earning which shall accrue to the enterprise, as per the tariff to be fixed by the company.

ART. 16. The grantees are authorized to require payment in advance of any charges which they may establish; nine-tenths of these charges shall be made payable in gold, and only the remaining one-tenth part shall be payable in silver of twenty-five grammes, of a fineness of 900.

ART. 17. The ships which shall infringe upon the rules established by the company shall be subject to the payment of a fine, which said company shall fix in its regulations, of which due notice shall be given to the public at the time of the issue of the tariff. Should they refuse to pay said fine, nor furnish sufficient security, they may

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be detained and prosecuted according to the laws. The same proceedings may be observed for the damages they may have caused.

ART. 18. If the opening of the canal shall be deemed financially possible, the grantees are authorized to form, under the immediate protection of the Colombian Government, a universal joint-stock company, which shall undertake the execution of the work, taking charge of all financial transactions which may be needed. As this enterprise is essentially international, and for public utility, it is understood that it shall always be kept free from political influences.

The company shall take the name of "The Universal Interoceanic Canal Association"; its residence shall be fixed in Bogota, New York, London, or Paris, as the grantees may choose; branch offices may be established wherever necessary. Its contracts, shares, bonds, and titles of its property shall never be subjected by the Government of Colombia to any charges for registry, emission, stamps, or any similar imposts upon the sale or transfer of these shares or bonds, as well as on the profits produced by these values.

ART. 19. The company is authorized to reserve as much as 10 per cent. of the shares emitted, to form a fund of shares, to the benefit of the founders and promoters of the enterprise. Of the products of the concern, the company take, in the first place, what is necessary to cover all expenses of repairs, operations, and administration, and the share which belongs to the government, as well as the sums necessary for the payment of the interest and the amortization of the bonds, and, if possible the fixed interest or dividend of the shares; that which remains will be considered as net profit, out of which 80 per cent. at least will be divided among the shareholders.

ART. 20.* The Colombian Government, should it consider it important, may name a special commissioner in the board of directors of the company. This delegate shall enjoy all the advantages conceded to the other directors by the statutes of the company. The grantees are obliged to appoint in Bogota, near the national government, an agent duly authorized to resolve all doubts and to present all demands to which this contract may give rise. Reciprocally, and with the same intention, the government shall name a resident agent in the principal establishment of the company on the canal. In every case the difficulties which may arise between the contracting parties shall be submitted to a committee of arbitrators, composed of four individuals, two of whom shall be selected by the executive power from among the members of the federal supreme court, and the other two named by the company. In case of a tie in the votes of this committee, the same arbitrators shall name a fifth party. The decision pronounced by this tribunal shall be final.

ART. 21. The grantees, or those who in future may succeed them in their rights, may transfer those rights to other capitalists or financial companies, but it is absolutely prohibited to cede or mortgage them under any considerations whatever to any nation or foreign government.

ART. 22.* The grantees or their representatives shall forfeit their acquired rights in the following cases:

1st. If they do not deposit within the term stipulated the amount required as security for the execution of the work.

2d. If in the first of the twelve years allowed for the construction of the canal the work is not already begun. In this case the company shall forfeit the sum deposited as a guarantee, and which shall go to the benefit of the republic.

3d. If at the termination of the period fixed by paragraph fifth of article one, the canal is not navigable.

4th. If they do not comply with the provisions of article 21.

5th. If the service of the canal should be interrupted without some superhuman obstacle.

In cases 2, 3, 4, and 5, the federal supreme court shall decide whether the privilege has become null or not.

ART. 23.* In all cases of declaration of nullity, the public lands mentioned in paragraphs 7 and 8 of article 1, and those not alienated among those conceded in article 4, will return to the possession of the republic in the state in which they are found, and without any indemnity whatever, and also the buildings, materials, works, and improvements of which the grantees hold possession in the canal. These shall reserve only their capital, vessels, provisions, and, in general, their movable property.

ART. 24. Five years previous to the expiration of the ninety-nine years of the privilege, the executive power shall appoint a commissioner to examine the condition of the canal and annexes, and, with the knowledge of the company or its agents on the isthmus, to make an official report, describing in every detail the condition of the same and pointing out what repairs may be necessary. This report will serve to establish in what condition the canal and its dependencies shall be delivered to the national government on the day of expiration of the privilege now granted.

ART. 25. The enterprise of the canal is reputed to be of public utility.

ART. 26. This contract, which will serve as a substitute for the provisions of law 33,

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* This article modified by Colombian Government. See decree which follows.

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of May 26, 1876, and the clauses of the contract celebrated on the 28th of May of the same year, shall be submitted for the approval of the President of the union and the definite acceptance by the Congress of the nation.

In witness whereof they sign the present in Bogota, on the 20th March, 1878.

EUSTORGIO SALGAR.
LUCIEN N. B. WYSE.

BOGOTA, *March 23, 1878.*

Approved.
The President of the union:

AQUILEO PARRA.

The secretary of the interior and of foreign relations:

EUSTORGIO SALGAR.

DECREES.

The foregoing contract is hereby approved, with the following modifications:

Article 1, with the addition of the following paragraph:

§—It is, however, stipulated and agreed that if, before the payment of the security determined upon in article 2, the Colombian Government should receive any formal proposal, sufficiently guaranteed, in the opinion of the said government, to construct the canal in less time and under more advantageous conditions for the United States of Colombia, said proposal shall be communicated to the grantees or their representatives, that they may be substituted therein, in which case they shall be preferred; but if they do not accept said substitution, the Colombian Government, in the new contract which they may celebrate, shall exact, besides the guarantee mentioned in article 2, the sum of three hundred thousand dollars in coin, which shall be given as indemnity to the grantees.

Article 2, thus:

ART. 2. Within the term of twelve months from the date at which the international commission shall have presented the definite results of their studies, the grantees shall deposit in the bank or banks of London, to be desigated by the national executive power, the sum of seven hundred and fifty thousand francs, to the exclusion of all paper money, as security for the execution of the work. The receipt of said banks shall be a voucher for the fulfillment of said deposit. It is understood that if the grantees should lose that deposit by virtue of the stipulations contained in clauses 2 and 3 of article 22 of the present contract, the sum referred to, with interest accrued, shall become *in toto* the property of the Colombian Government. After the conclusion of the canal, said sum, without interest, which latter will in this case belong to the grantees, shall remain for the benefit of the treasury, for the outlays which it may have incurred or may incur in the construction of buildings for the service of the public officers.

Article 3, thus:

ART. 3. If the line of the canal to be constructed from sea to sea should pass to the west and to the north of the imaginary straight line which joins Cape Tiburon with Garachiné Point, the grantees must enter into some amicable arrangement with the Panama Railroad Company, or pay an indemnity, which shall be established in accordance with the provisions of law 46, of August 16, 1867, 'approving the contract celebrated on July 5, 1867, reformatory of the contract of April 15, 1850, for the construction of an iron railroad from one ocean to the other through the Isthmus of Panama.'

In case the international commissions should choose the Atrato or some other stream already navigable as one of the entrances to the canal, the ingress and egress by such stream, and the navigation of its waters, so long as it is not intended to cross the canal shall be open to commerce and free from all imposts.

Article 4, thus:

ART. 4. Besides the lands granted in paragraphs 7 and 8 of article 1, there shall be awarded to the grantees, as an aid for the accomplishment of the work, and not otherwise, five hundred thousand hectares of public lands, with the mines they may comprise, in the localities which the company may select. This award shall be made directly by the national executive power. The public lands situated on the sea-coast, on the borders of the canal or of the rivers, shall be divided into alternate lots between the government and the company, forming areas of from one to two thousand hectares. The measurements for the allotment or locating shall be made at the expense of the grantees, and with the intervention of government commissioners. The public lands thus granted, with the mines they may hold, shall be awarded to the grantees

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as fast as the work of construction of the canal progresses, and in accordance with rules to be laid down by the executive power.

Within a belt of two myriameters on each side of the canal, and during five years after the termination of the work, the government shall not have the right to grant other lands beyond the said lots until the company shall have called for the whole number of lots granted by this article.

Article 5, thus:

ART. 5. The government of the republic hereby declares the ports at each end of the canal, and the waters of the latter from sea to sea, to be neutral for all time; and consequently, in case of war among other nations, the transit through the canal shall not be interrupted by such event, and the merchant vessels and individuals of all nations of the world may enter into said ports and travel on the canal without being molested or detained. In general, any vessel may pass freely without any discrimination, exclusion, or preference of nationalities or persons, on payment of the dues, and the observance of the rules established by the company for the use of the canal and its dependencies. Exception is to be made of foreign troops, which shall not have the right to pass without permission from Congress, and of the vessels of nations which, being at war with the United States of Colombia, may not have obtained the right to pass through the canal at all times, by public treaties wherein is guaranteed the sovereignty of Colombia over the Isthmus of Panama and over the territory whereon the canal is to be cut, besides the immunity and neutrality of the said canal, its ports, bays, and dependencies, and the adjacent seas.

Article 6, thus:

ART. 6. The United States of Colombia reserves to themselves the right to pass their vessels, troops, ammunitions of war at all times and without paying any dues whatever. The passage of the canal is strictly closed to war vessels of nations at war with another or other nations, and which may not have acquired, by public treaty with the Colombian Governments, the right to pass by the canal at all times.

Article 8, thus:

ART. 8. The executive power shall dictate, for the protection of the financial interests of the republic, the regulations conducive to the prevention of smuggling, and shall have the power to station, at the cost of the nation, the number of men which they may deem necessary for that service.

Out of the indispensable officials for that service, ten shall be paid by the company, and their salaries shall not exceed those enjoyed by employés of the same rank in the Barranquilla custom-house.

The company shall carry gratis through the canal, or on the auxiliary railway, the men destined for the service of the nation, for the service of the state through whose territory the canal may pass, or for the service of the police, with the object of guarding against foreign enemies, or for the preservation of public order, and shall also transport gratis the baggage of such men, their war materials, armament, and clothing which they may need for the service assigned to them.

The subsistence of the public force which may be deemed necessary for the safety of the interoceanic transit shall likewise be at the expense of the company.

Article 13, thus:

ART. 13. The government allows the immigration and free access to the lands and shops of the grantees of all the employés and workingmen of whatever nationality, who may be contracted for the work, or who may come to engage themselves to work on the canal, on condition that such employés or laborers shall submit to the existing laws, and to the regulations established by the company. The government promises them support and protection, and the enjoyment of their rights and guarantees, in conformity with the national constitution and laws, during the time they may sojourn on Colombian territory.

The *national peons* and laborers employed on the work of the canal shall be exempt from all requisition of military service, national as well as of the state.

Article 14, thus:

ART. 14. In order to indemnify the *grantees* of the construction, maintenance, and working expenses incurred by them, they shall have, during the whole period of the privilege, the exclusive right to establish and collect for the passage of the canal and its ports, the dues for light-houses, anchorage, transit, navigation, repairs, pilotage, towage, hauling, stowage, and of station according to the tariff which they may issue, and which they may modify at any time under the following express conditions:

1st. They shall collect these dues, without any exceptional favor, from all vessels in like circumstances.

2d. The tariffs shall be published four months before their enforcement in the Diario Oficial of the government, as well as in the capitals and the principal commercial ports of the countries interested.

3d. The principal navigation dues to be collected shall not exceed the sum of ten francs for each cubic meter resulting from the multiplication of the principle dimensions of the submerged part of the ship in transit (length, breadth, and draught).

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4th. The principal dimensions of the ship in transit, that is to say, the maximum exterior length and breadth at the water-line, as well as the greatest draught, shall be the metrical dimension inserted in the official clearance papers, excepting any modifications supervening during the voyage. The ships' captains and the company's agents may demand a new measurement, which operations shall be carried out at the expense of the petitioner; and

5th. The same measurement, that is to say, the number of cubic meters contained in the parallelopipedon circumscribing the submerged part of the ship, shall serve as a basis for the determination of the other accessory dues.

Article 15, thus:

ART. 15. By way of compensation for the rights and exemptions which are allowed to the grantees in this contract, the government of the republic shall be entitled to a share amounting to five per cent. on all collections made by the company, by virtue of the dues which may be imposed in conformity with Article 14, during the first twenty-five years after the opening of the canal to the public service. From the twenty-sixth up to the fiftieth year, inclusive, it shall be entitled to a share of (6%) six per cent: from the fifty-first to the seventy-fifth to seven per cent; and from the seventy-sixth to the termination of the privilege to eight per cent. It is understood that these shares shall be reckoned, as has been said, on the gross income from all sources, without any deductions whatever for expenses, interest on shares, or on loans or debts against the company. The government of the republic shall have the right to appoint a commissioner or agent, who shall intervene in the collections and examine the accounts, and the distribution or payment of the shares coming to the government shall be made in due half-yearly installments. The product of the five, six, seven and eight per cent. shall be distributed as follows:

Four-fifths of it shall go to the government of the republic, and the remaining one-fifth to the government of the state through whose territory the canal may pass.

The company guarantees to the Government of Colombia that the share of the latter shall in no case be less than the sum of two hundred and fifty thousand dollars a year, which is the same as that received as its share in the earnings of the Panama Railroad, so that if in any year the five per cent. share should not reach said sum, it shall be completed out of the common funds of the company.

Article 20, thus:

ART. 20. The Colombian Government may appoint a special delegate in the board of directors of the company whenever it may consider it useful to do so. This delegate shall enjoy the same advantages as are granted to the other directors by the by-laws of the company.

The grantees pledge themselves to appoint in the capital of the union, near the national government, a duly-authorized agent for the purpose of clearing up all doubts and presenting any claims to which this contract may give rise. Reciprocally and in the same sense, the government shall appoint an agent, who shall reside in the principal establishment of the company situated on the line of the canal; and, according to the national constitution, the difficulties which may arise between the contracting parties shall be submitted to the decision of the federal supreme court.

Article 22, thus:

ART. 22. The grantees, or their representatives, shall lose the right hereby acquired in the following cases:

1st. If they do not deposit, on the terms agreed upon, the sum which by way of security must insure the execution of the work.

2d. If, in the first year of the twelve that are allowed for the construction of the canal, the works are not already commenced, in this case the company shall lose the sum deposited by way of security, together with the interest that may have accrued; all of which will remain for the benefit of the republic.

3d. If, at the end of the second period fixed in paragraph 5 of Article 1, the canal is not transitable, in this case also the company shall lose the sum deposited as security; which, with the interests accrued, shall remain for the benefit of the republic.

4th. If they violate the prescriptions of Article 21; and,

5th. If the service of the canal should be interrupted for a longer period than six months without its being occasioned by the acts of God, &c.

In cases 2, 3, 4, and 5, the federal supreme court shall have the right to decide whether the privilege has become annulled or not.

Article 23, thus:

ART. 23. In all cases of decisions of nullity, the public lands mentioned in clauses 7 and 8 of Article 1, and such lands as are not settled or inhabited from among those granted by Article 4, shall revert to the possession of the republic in the condition they may be found in, and without any indemnity whatever, as well as the buildings, materials, works, and improvements which the grantees may possess along the canal and its accessories. The grantees shall only retain their capital, vessels, provisions, and in general all movable property.

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Given at Bogota on the seventeenth day of May, eighteen hundred and seventy-eight.

The president of the senate of plenipotentiaries:

RAMON GOMEZ.

The president of the chamber of representatives:

BELISARIO ESPONDA.

The secretary of the senate of plenipotentiaries:

JULIO E. PEREZ.

The secretary of the chamber of representatives:

ENRIQUE GAONA.

BOGOTA, *May 18, 1878.*

Let it be published and enforced.

The President of the Union:

[SEAL.]

JULIAN TRUJILLO.

The secretary of the interior and foreign relations:

FRANCISCO J. ZALDUA.

Note from Mr. Lucien N. B. Wyse, wherein he declares he accepts all the modifications made by law 28 to the contract for the construction of the interoceanic canal.

To the honorable Secretary of the Interior and Foreign Relations:

I have the honor to inform you that I accept each and all of the modifications introduced by Congress to the contract which I celebrated with Señor Eustorgio Salgar, your worthy predecessor in the department of the interior and foreign relations, for the construction of the interoceanic canal, which contract was approved by the executive power under date of March 23 last.

The modifications to which I have alluded are those recorded in law No. 28 of the 18th instant.

I hasten to lay this declaration before the Governor of Colombia, so that it may be taken in consideration, in order that said law may be effective in all its parts.

BOGOTA, May 18, 1878.

LUCIEN N. B. WYSE,

Chief of the International Scientific Commission for the Survey of the Isthmus, Member and Delegate from the Board of Directors of the Interoceanic Canal Association.

68.—*Mr. Blaine to Mr. Lowell.*

No. 187.] DEPARTMENT OF STATE,
Washington, June 24, 1881.

SIR: It has fallen under the observation of the President, through the current statements of the European press and other usual channels of communication, that the great powers of Europe may possibly be considering the subject of jointly guaranteeing the neutrality of the interoceanic canal now projected across the Isthmus of Panama.

The United States recognizes a proper guarantee of neutrality as essential to the construction and successful operation of any highway across the Isthmus of Panama, and in the last generation every step was taken by this government that is deemed requisite in the premises. The necessity was foreseen and abundantly provided for, long in advance of any possible call for the actual exercise of power.

In 1846 a memorable and important treaty was negotiated and signed between the United States of America and the Republic of New Granada, now the United States of Colombia. By the thirty-fifth article of that treaty, in exchange for certain concessions made to the United States, we guaranteed "positively and efficaciously" the perfect neutrality of the isthmus and of any interoceanic communications that might be constructed upon or over it for the maintenance of free transit from sea to sea; and we also guaranteed the rights of sovereignty and property of the United States of Colombia over the territory of the isthmus as included within the borders of the State of Panama.

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In the judgment of the President this guarantee, given by the United States of America, does not require re-enforcement, or accession, or assent from any other power. In more than one instance this government has been called upon to vindicate the neutrality thus guaranteed, and there is no contingency, now foreseen or apprehended, in which such vindication would not be within the power of this nation.

There has never been the slightest doubt on the part of the United States as to the purpose or extent of the obligation then assumed, by which it became surety alike for the free transit of the world's commerce over whatever land-way or water-way might be opened from sea to sea, and for the protection of the territorial rights of Colombia from aggression or interference of any kind. Nor has there ever been room to question the full extent of the advantages and benefits, naturally due to its geographical position and political relations on the Western continent, which the United States obtained from the owner of the isthmian territory in exchange for that far-reaching and responsible guarantee.

If the foreshadowed action of the European powers should assume tangible shape, it would be well for you to bring to the notice of Lord Granville the provisions of the treaty of 1846, and especially of its thirty-fifth article, and to intimate to him that any movement in the sense of supplementing the guarantee contained therein would necessarily be regarded by this government as an uncalled-for intrusion into a field where the local and general interests of the United States of America must be considered before those of any other power save those of the United States of Colombia, alone, which has already derived and will continue to derive such eminent advantages from the guarantee of this government.

The President deems it due to frankness to be still more explicit on this subject, and to elucidate the views of the United States Government with somewhat of detail, to the end that no uncertainty shall subsist as to the integrity of our motives or the distinctness of our aims.

It is not the wish or the purpose of the United States to interfere with any commercial enterprise in which the citizens or subjects of any foreign power may see fit to embark under a lawful privilege. The fact of the stock and franchises of the Panama Canal or the Panama Railway being owned in Europe, either in whole or principally, is no more a subject of complaint on the part of the United States than is the circumstance that the stock of many of its own great lines of railway is largely held abroad. Such ownership, with its attendant rights, is in the United States amply secured by the laws of the land, and on the Isthmus is doubly secured by the local laws of Colombia, under the superior guarantee of the United States.

Nor, in time of peace, does the United States seek to have any exclusive privileges accorded to American ships in respect to precedence or tolls through an interoceanic canal any more than it has sought like privileges for American goods in transit over the Panama Railway, under the exclusive control of an American corporation. The extent of the privileges of American citizens and ships is measurable under the treaty of 1846 by those of Colombian citizens and ships. It would be our earnest desire and expectation to see the world's peaceful commerce enjoy the same just, liberal, and rational treatment.

It is as regards the political control of such a canal, as distinguished from its merely administrative or commerical regulation, that the President feels called upon to speak with directness and with emphasis. During any war to which the United States of America or the United

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States of Colombia might be a party, the passage of armed vessels of a hostile nation through the canal of Panama would be no more admissible than would the passage of the armed forces of a hostile nation over the railway lines joining the Atlantic and Pacific shores of the United States or of Colombia. And the United States of America will insist upon her right to take all needful precautions against the possibility of the isthmus transit being in any event used offensively against her interests upon the land or upon the sea.

The two republics between which the guarantee of neutrality and possession exists have analogous conditions with respect to their territorial extension. Both have a long line of coast on either ocean to protect as well as to improve. The possessions of the United States upon the Pacific coast are imperial in extent and of extraordinary growth. Even at their present stage of development they would supply the larger part of the traffic which would seek the advantages of the canal. The States of California and Oregon, and the Territory of Washington, larger in area than England and France, produce for export more than a ton of wheat for each inhabitant, and the entire freights demanding water transportation eastward, already enormous, are augmenting each year with an accelerating ratio. While the population and products of the Pacific slope are thus increasing upon a vast scale, the railway system connecting the Gulf of Mexico with the interior and with the Great Lakes is being rapidly extended, thus affording additional facilities for enlarging the commerce that must seek the coast-line to the Pacific, of which the projected canal at Panama will form a part, and be as truly a channel of communication between the Eastern and far Western States as our own transcontinental railways. It is the perception of this domestic function of the long-sought water-way between the two seas that border the republic which has caused the project to be regarded as of vital importance by this government. The history of the enterprise is marked from the outset by the numerous expeditions which have, from time to time, been sent out by the United States at large expense to explore the various routes, and thus facilitate the work when the time should be ripe and the vast capital be forthcoming for the undertaking.

If the proposed canal were a channel of communication near to the countries of the Old World, and employed wholly, or almost wholly, by their commerce, it might very properly be urged that the influence of the European powers should be commensurate with their interests. With the exercise of such influence the United States could find no fault, especially if assured of equal participation in the peaceable enjoyment of the commercial facilities so afforded. The case, however, is here reversed, and an agreement between the European states to jointly guarantee the neutrality and in effect control the political character of a highway of commerce, remote from them and near to us, forming substantially a part of our coast-line and promising to become the chief means of transportation between our Atlantic and Pacific States, would be viewed by this government with the gravest concern.

The policy of the United States is one of peace and friendly intercourse with every government and people. This disposition is frankly avowed, and is, moreover, abundantly shown in the fact that our armaments by land and sea are kept within such limits as to afford no ground for distrust or suspicion of menace to other nations. The guarantee entered into by this government in 1846 was manifestly in the interest of peace, and the necessity imposed by circumstances upon the United States of America to watch over a highway between its two coasts was so imperative that the resultant guarantee was the simplest justice to the chief interests concerned. Any attempt to supersede that guaran-

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tee by an agreement between European powers, which maintain vast armies and patrol the sea with immense fleets, and whose interest in the canal and its operations can never be so vital and supreme as ours, would partake of the nature of an alliance against the United States, and would be regarded by this government as an indication of unfriendly feeling. It would be but an inadequate response to the good-will we bear them and to our cheerful and constant recognition of their own rights of domestic policy, as well as those resulting from proximity or springing from neighborly interest.

The great European powers have repeatedly united in agreements such as guarantees of neutrality touching the political condition of states like Luxembourg, Belgium, Switzerland, and parts of the Orient, where the localities were adjacent or where the interests involved concerned them nearly and deeply. Recognizing these facts, the United States has never offered to take part in such agreements or to make any agreements supplementary to them.

While thus observing the strictest neutrality with respect to complications abroad, it is the long-settled conviction of this government that any extension to our shores of the political system by which the great powers have controlled and determined events in Europe would be attended with danger to the peace and welfare of this nation.

While the Government of the United States has no intention of initiating any discussion upon this subject, it is proper that you should be prepared, in case of concerted action or conference or exchange of opinions thereon between the great powers of Europe, to communicate to the government to which you are accredited the views of the President as frankly and as fully as they are herein set forth. And at suitable times in your personal and friendly intercourse with your colleagues of the diplomatic body at London, you may find it proper to give discreet expression to the policy and motives of your government in the premises.

You will be careful, in any conversations you may have, not to represent the position of the United States as the development of a new policy, or the inauguration of any advanced, aggressive steps to be taken by this government. It is nothing more than the pronounced adherence of the United States to principles long since enunciated by the highest authority of the government, and now, in the judgment of the President, firmly inwoven as an intregral and important part of our national policy.

In his address upon taking the oath of office the President distinctly proclaimed the position which the Government of the United States would hold upon this question, and if the European cabinets have failed to observe or give due heed to the declarations then made, it may be well for you on some proper occasion to call the attention of the minister of foreign affairs to the language used by the President.

I am, &c.,

JAMES G. BLAINE.

Sent *mutatis mutandis* to the United States ministers in Europe.

69.—*Mr. Hoppin to Mr. Blaine.*

No. 218.] LEGATION OF THE UNITED STATES,
London, November 11, 1881. (Received November 26.)

SIR: Referring to your instructions No. 187, of the 24th of June last, and No. 188, of the 25th of June last, to Mr. Lowell, in relation to the

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proposed guarantee by European powers of the neutrality of the projected canal across the Isthmus of Panama, I have the honor to acquaint you that Mr. Lowell, agreeably to the suggestion in No. 187, left a copy of that instruction at the foreign office on the 12th of July last. I have to-day received a letter from Lord Granville in reply to that instruction, and I beg to inclose a copy of the same herewith.

I have, &c.,

W. J. HOPPIN.

[Inclosure with No. 218.]

Lord Granville to Mr. Hoppin.

FOREIGN OFFICE, *November 10, 1881.*

SIR: You are doubtless aware that Mr. Lowell left with this department on the 12th of July last a copy of a dispatch which had been addressed to him by Mr. Blaine on the 24th of June, in which the Secretary of State calls attention to the right and duty which are imposed on the United States Government under the treaty signed in 1846 between the United States of America and the Republic of New Granada, now known as the United States of Colombia, to guarantee the neutrality of the interoceanic canal which is projected across the Isthmus of Panama. Mr. Blaine further points out the special interest which the United States have in the preservation of this neutrality, and in preventing the use of the canal in a manner detrimental to themselves during any war in which the United States or Colombia might be a party.

But the point on which special stress is laid in this dispatch is the objection entertained by the Government of the United States to any concerted action of the European powers for the purpose of guaranteeing the neutrality of the canal or determining the conditions of its use.

I have now the honor to state to you that although some time has elapsed since the views of the United States Government on this question were communicated to Her Majesty's Government, they have not failed in the mean while to bestow upon it all the consideration to which the importance of the subject gives it every claim, and if it has not received an earlier recognition the delay has been mainly caused by the suspense which so long existed as to the termination of the sad tragedy of the 2d of July.

Her Majesty's Government have noted with satisfaction the statement made by Mr. Blaine that there is no intention on the part of the Government of the United States to initiate any discussion upon this subject, and in the same spirit I do not now propose to enter into a detailed argument in reply to Mr. Blaine's observations.

I should wish, therefore, merely to point out to you that the position of Great Britain and the United States with reference to the canal, irrespective of the magnitude of the commercial relations of the former power with countries to and from which, if completed, it will form the highway, is determined by the engagements entered into by them, respectively, in the convention which was signed at Washington on the 19th of April, 1850, commonly known as the Clayton-Bulwer treaty, and Her Majesty's Government rely with confidence upon the observance of all the engagements of that treaty.

I have, &c.,

GRANVILLE.

70.—*Mr. Blaine to Mr. Lowell.*

270.] DEPARTMENT OF STATE,
Washington, November 19, 1881.

SIR: In pursuance of the premises laid down in my circular note of June 24 of this year touching the determination of this government with respect to the guarantee of neutrality for the interoceanic canal at Panama, it becomes my duty to call your attention to the convention of April 19, 1850, between Great Britain and the United States, commonly known as the Clayton-Bulwer treaty.

According to the articles of that convention the high contracting parties, in referring, to an interoceanic canal through Nicaragua, agreed "that

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neither the one nor the other will ever obtain or maintain for itself any exclusive control over said ship-canal, and that neither will ever erect or maintain any fortifications commanding the same or in the vicinity thereof." In a concluding paragraph the high contracting parties agreed "to extend their protection by treaty stipulations to any other practical communications, whether by canal or railway, across the Isthmus * * * which are now proposed to be established by way of Tehuantepec or Panama."

This convention was made more than thirty years ago, under exceptional and extraordinary conditions which have long since ceased to exist—conditions which at best were temporary in their nature, and which can never be reproduced.

The remarkable development of the United States on the Pacific coast since that time has created new duties for this government, and devolved new responsibilities upon it, the full and complete discharge of which requires in the judgment of the President some essential modifications in the Clayton-Bulwer treaty. The interests of Her Majesty's Government involved in this question, in so far as they may be properly judged by the observation of a friendly power, are so inconsiderable in comparison with those of the United States that the President hopes a readjustment of the terms of the treaty may be reached in a spirit of amity and concord.

The respect due to Her Majesty's Government demands that the objections to the perpetuity of the convention of 1850, as it now exists, should be stated with directness and with entire frankness. And among the most salient and palpable of these is the fact that the operation of the treaty practically concedes to Great Britain the control of whatever canal may be constructed.

The insular position of the home government, with its extended colonial possessions, requires the British Empire to maintain a vast naval establishment, which, in our continental solidity, we do not need, and in time of peace shall never create. If the United States binds itself not to fortify on land, it concedes that Great Britain, in the possible case of a struggle for the control of the canal, shall at the outset have an advantage which would prove decisive, and which could not be reversed except by the expenditure of treasure and force. The presumptive intention of the treaty was to place the two powers on a plane of perfect equality, with respect to the canal, but in practice, as I have indicated, this would prove utterly delusive, and would instead surrender it, if not in form, yet in effect, to the control of Great Britain.

The treaty binds the United States not to use its military force in any precautionary measure, while it leaves the naval power of Great Britain perfectly free and unrestrained; ready at any moment of need to seize both ends of the canal, and render its military occupation on land a matter entirely within the discretion of Her Majesty's Government.

The military power of the United States, as shown by the recent civil war, is without limit, and in any conflict on the American continent altogether irresistible. The Clayton-Bulwer treaty commands this government not to use a single regiment of troops to protect its interests in connection with the interoceanic canal, but to surrender the transit to the guardianship and control of the British navy. If no American soldier is to be quartered on the Isthmus to protect the rights of his country in the interoceanic canal, surely, by the fair logic of neutrality, no war vessel of Great Britain should be permitted to appear in the waters that control either entrance to the canal.

A more comprehensive objection to the treaty is urged by this govern-

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ment. Its provisions embody a misconception of the relative positions of Great Britain and the United States with respect to the interests of each government in questions pertaining to this continent. The Government of the United States has no occasion to disavow an aggressive disposition. Its entire policy establishes its pacific character, and among its chief aims is to cultivate the most friendly and intimate relations with its neighbors, both independent and colonial. At the same time, this government, with respect to European states, will not consent to perpetuate any treaty that impeaches our right and long-established claim to priority on the American continent.

The United States seeks only to use for the defense of its own interests the same forecast and provision which Her Majesty's Government so emphatically employs in defense of the interests of the British Empire. To guard her Eastern possessions, to secure the most rapid transit for troops and munitions of war, and to prevent any other nation having equal facilities in the same direction, Great Britain holds and fortifies all the strategic points that control the route to India. At Gibraltar, at Malta, at Cyprus, her fortifications give her the mastery of the Mediterranean. She holds a controlling interest in the Suez Canal, and by her fortifications at Aden and on the island of Perim she excludes all other powers from the waters of the Red Sea and renders it a *mare clausum*. It would, in the judgment of the President, be no more unreasonable for the United States to demand a share in these fortifications, or to demand their absolute neutralization, than for England to make the same demand in perpetuity from the United States with respect to the transit across the American continent. The possessions which Great Britain thus carefully guards in the East are not of more importance to her than is the Pacific slope, with its present development and assured growth, to the Government of the United States.

The States and Territories appurtenant to the Pacific Ocean and dependent upon it for commercial outlet, and hence directly interested in the canal, comprise an area of nearly eight hundred thousand square miles, larger in extent than the German Empire and the four Latin countries of Europe combined.

This vast region is but fairly beginning its prosperous development. Six thousand miles of railway are already constructed within its limits, and it is a moderate calculation to say that within the current decade the number of miles will at least be doubled. In the near future the money value of its surplus for export will be as large as that of British India, and perhaps larger. Nor must it be forgotten that India is but a distant colony of Great Britain, while the region on the Pacific is an integral portion of our national Union, and is of the very form and body of our state. The inhabitants of India are alien from England in race, language, and religion. The citizens of California, Oregon, and Nevada, with the adjacent Territories, are of our own blood and kindred —bone of our bone and flesh of our flesh.

Great Britain appreciates the advantage and perhaps the necessity of maintaining, at the cost of large military and naval establishments, the interior and nearest route to India, while any nation with hostile intent is compelled to take the longer route and travel many thousand additional miles through dangerous seas. It is hardly conceivable that the same great power which considers herself justified in taking these precautions for the safety of a remote colony on another continent should object to the United States adopting similar but far less demonstrative measures for the protection of the distant shores of her own domain, for the drawing together of the extremes of the Union in still closer bonds

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of interest and sympathy, and for holding, in the quiet determination of an honorable self-defense, the absolute control of the great waterway which shall unite the two oceans, and which the United States will always insist upon treating as part of her coast line.

If a hostile movement should at any time be made against the Pacific coast, threatening danger to its people and destruction to its property, the Government of the United States would feel that it had been unfaithful to its duty and neglectful towards its own citizens if it permitted itself to be bound by a treaty which gave the same right through the canal to a war-ship bent on an errand of destruction that is reserved to its own navy, sailing for the defense of our coast and the protection of the lives of our people. And as England insists by the might of her power that her enemies in war shall strike her Indian possessions only by doubling the Cape of Good Hope, so the Government of the United States will equally insist that the interior, more speedy, and safer route of the canal shall be reserved for ourselves, while our enemies, if we shall ever be so unfortunate as to have any, shall be remanded to the voyage around Cape Horn.

A consideration of controlling influence in this question is the well-settled conviction on the part of this government that only by the United States exercising supervision can the Isthmus canals be definitely and at all times secured against the interference and obstruction incident to war. A mere agreement of neutrality on paper between the great powers of Europe might prove ineffectual to preserve the canal in time of hostilities. The first sound of a cannon in a general European war would in all probability annul the treaty of neutrality, and the strategic position of the canal, commanding both oceans, might be held by the first naval power that could seize it. If this should be done the United States would suffer such grave inconvenience and loss in her domestic commerce as would enforce the duty of a defensive and protective war on her part for the mere purpose of gaining that control which in advance she insists is due to her position and demanded by her necessities.

I am not arguing or assuming that a general war, or any war at all, is imminent in Europe. But it must not be forgotten that within the past twenty-five years all the great powers of Europe have been engaged in war; most of them more than once. In only a single instance in the past hundred years has the United States exchanged a hostile shot with any European power. It is in the highest degree improbable that for a hundred years to come even that experience will be repeated.

It consequently becomes evident that the one conclusive mode of preserving any Isthmus canal from the possible distraction and destruction of war is to place it under the control of that government least likely to be engaged in war, and able, in any and every event, to enforce the guardianship which she shall assume.

For self-protection to her own interests, therefore, the United States in the first instance asserts her right to control the Isthmus transit. And, secondly, she offers by such control that absolute neutralization of the canal as respects European powers which can in no other way be certainly attained and lastingly assured.

Another consideration forcibly suggests the necessity of modifying the convention under discussion. At the time it was agreed to, Great Britain and the United States were the only nations prominent in the commerce of Central and South America. Since that time other leading nations have greatly enlarged their commercial connections with that country, and are to-day contending for supremacy in the trade of those shores. Within the past four years, indeed, the number of French

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and German vessels landing on the two coasts of Central America far exceeds the number of British vessels.

While, therefore, Great Britain and the United States may agree to do nothing, and, according to the present convention, each remains bound to the other in common helplessness, a third power, or a fourth, or a combination of many, may step in and give direction to the project which the Clayton-Bulwer treaty assumed was under the sole control of the two English-speaking nations. Indeed, so far as the canal scheme now projected at Panama finds a national sponsor or patron, it is in the Republic of France, and the non-intervention enjoined upon this country by the Clayton-Bulwer treaty, if applied to that canal, would paralyze the arm of the United States in any attempt to assert the plain rights and privileges which this government acquired through a solemn treaty with the Republic of Colombia anterior to the Clayton-Bulwer convention, so that the modification of the treaty of 1850, now sought, is not only to free the United States from unequal and inequitable obligations to Great Britain, but also to empower this government to treat with all other nations seeking a foothold on the Isthmus on the same basis of impartial justice and independence.

One of the motives that originally induced this government to assent to the Clayton-Bulwer treaty, not distinctly expressed in the instrument, but inferable from every line of it, was the expected aid of British capital in the construction of the Nicaraguan canal. That expectation has not been realized, and the changed condition of this country since 1850 has diminished, if it has not entirely removed from consideration, any advantage to be derived from that source. Whenever, in the judgment of the United States Government, the time shall be auspicious and the conditions favorable for the construction of the Nicaraguan canal, no aid will be needed outside of the resources of our own government and people; and while foreign capital will always be welcomed and never repelled, it cannot henceforth enter as an essential factor in the determination of this problem.

It is earnestly hoped by the President that the considerations now presented will have due weight and influence with Her Majesty's Government, and that the modifications of the treaty desired by the United States will be conceded in the same friendly spirit in which they are asked. The following is a summary of the changes necessary to meet the views of this government:

First. Every part of the treaty which forbids the United States fortifying the canal and holding the political control of it in conjunction with the country in which it is located to be canceled.

Second. Every part of the treaty in which Great Britain and the United States agree to make no acquisition of territory in Central America, to remain in full force. As an original proposition, this government would not admit that Great Britain and the United States should be put on the same basis, even negatively, with respect to territorial acquisitions on the American continent, and would be unwilling to establish such a precedent without full explanation. But the treaty contains that provision with respect to Central America, and if the United States should seek its annulment, it might give rise to erroneous and mischievous apprehensions among a people with whom this government desires to be on the most friendly terms. The United States has taken special occasion to assure the Spanish-American republics to the south of us that we do not intend and do not desire to cross their borders or in any way disturb their territorial integrity, and we shall not willingly incur the risk of a misunderstanding by annulling the

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clauses in the Clayton-Bulwer treaty which forbid such a step with Central America. The acquisition of military and naval stations necessary for the protection of the canal and voluntarily ceded to the United States by the Central American States, not to be regarded as a violation of the provisions contained in the foregoing.

Third. The United States will not object to maintaining the clause looking to the establishment of a free port at each end of whatever canal may be constructed, if England desires it to be retained.

Fourth. The clause in which the two governments agreed to make treaty stipulations for a joint protectorate of whatever railway or canal might be constructed at Tehauntepec or Panama has never been perfected. No treaty stipulations for the proposed end have been suggested by either party, although citizens of the United States long since constructed a railway at Panama, and are now engaged in the same work at Tehauntepec. It is a fair presumption, in the judgment of the President, that this provision should be regarded as absolute by the non-action and common consent of the two governments.

Fifth. The clause defining the distance from either end of the canal where in time of war captures might be made by either belligerent on the high seas was left incomplete, and the distance was never determined. In the judgment of the President, speaking in the interest of peaceful commerce, this distance should be made as liberal as possible, and might, with advantage, as a question relating to the high seas and common to all nations, be a matter of stipulation between the great powers of the world.

In assuming as a necessity the political control of whatever canal or canals may be constructed across the Isthmus, the United States will act in entire harmony with the governments within whose territory the canals shall be located. Between the United States and the other American republics there can be no hostility, no jealousy, no rivalry, no distrust. This government entertains no design in connection with this project for its own advantage which is not also for the equal or greater advantage of the country to be directly and immediately affected. Nor does the United States seek any exclusive or narrow commercial advantage. It frankly agrees and will by public proclamation declare at the proper time, in conjunction with the republic on whose soil the canal may be located, that the same rights and privileges, the same tolls and obligations for the use of the canal, shall apply with absolute impartiality to the merchant marine of every nation on the globe. And equally in time of peace, the harmless use of the canal shall be freely granted to the war vessels of other nations. In time of war, aside from the defensive use to be made of it by the country in which it is constructed and by the United States, the canal shall be impartially closed against the war vessels of all belligerents.

It is the desire and determination of the United States that the canal shall be used only for the development and increase of peaceful commerce among all the nations, and shall not be considered a strategic point in warfare which may tempt the aggression of belligerents or be seized under the compulsions of military necessity by any of the great powers that may have contests in which the United States has no stake and will take no part.

If it be asked why the United States objects to the assent of European governments to the terms of neutrality for the operation of the canal, my answer is that the right to assent implies the right to dissent, and thus the whole question would be thrown open for contention as an international issue. It is the fixed purpose of the United States to con-

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fine it strictly and solely as an American question, to be dealt with and decided by the American Government.

In presenting the views contained herein to Lord Granville, you will take occasion to say that the Government of the United States seeks this particular time for the discussion as most opportune and auspicious. At no period since the peace of 1783 have relations between the British and American Governments been so cordial and friendly as now. And I am sure Her Majesty's Government will find in the views now suggested and the propositions now submitted additional evidence of the desire of this government to remove all possible grounds of controversy between two nations which have so many interests in common and so many reasons for honorable and lasting peace.

You will, at the earliest opportunity, acquaint Lord Granville with the purpose of the United States touching the Clayton-Bulwer treaty, and in your own way you will impress him fully with the views of your government.

I refrain from directing that a copy of this instruction be left with his lordship, because in reviewing the case I have necessarily been compelled, in drawing illustrations from British policy, to indulge somewhat freely in the *argumentum ad hominem.*

This course of reasoning in an instruction to our own minister is altogether legitimate and pertinent, and yet might seem discourteous if addressed directly to the British Government. You may deem it expedient to make this explanation to Lord Granville, and if, afterwards, he shall desire a copy of this instruction, you will of course furnish it.

I am, &c.,

JAMES G. BLAINE.

71.—*Mr. Blaine to Mr. Lowell.*

No. 281.] DEPARTMENT OF STATE,
Washington, November 29, 1881.

SIR: One week after mailing my instruction to you, on the 19th instant, touching the presentation to Her Majesty's Government of a proposal for the modification of the convention between the two countries of April 19, 1850, better known as the Clayton-Bulwer treaty, I received Mr. Hoppin's No. 218, of the 11th instant, communicating the response of Lord Granville to my circular note of the 24th of June last, in relation to the neutrality of any canal across the Isthmus of Panama. I regret that Mr. Hoppin should not have advised me by telegraph of the purport of his lordship's reply, as it would have enabled me to present the arguments of my dispatch of the 19th instant in a more specific form, as meeting a positive issue, rather than as generally dealing with a subject which, for thirty years, has been regarded in but one light by the public opinion of the United States. It seems proper now, however, in reply to his lordship's note of November 10, to give a summary of the historical objections to the Clayton-Bulwer treaty, and the very decided differences of opinion between the two governments to which its interpretation has given rise.

I need hardly point out to you the well-known circumstance that, even at the time of the conclusion of the Clayton-Bulwer treaty, a very considerable opposition was shown thereto on the part of the far-sighted men in public life who correctly estimated the complications which the uncertain terms of that compact might occasion. It was ably contended in Congress that its provisions did not, even then, suffice to meet the

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real points at issue with respect to the guarantee of the neutrality of the whole American isthmus on bases comporting with the national interests of the United States, and the differences of interpretation became soon after so marked as to warrant the extreme proposal of Her Majesty's Government to refer them to the arbitration of a friendly power.

The justice of those doubts became still more evident six years later, when the pretensions put forth by Her Majesty's Government toward territorial protection, if not absolute control, of portions of Nicaragua and of the outlying Bay Islands brought up the precise question of how far the provisions of the Clayton-Bulwer compact operated to restrain the projected movement, and thereupon the interpretations respectively put upon that instrument by the United States and Great Britain were perceived to be in open conflict. The attempt made in the Clarendon-Dallas treaty, which was negotiated on the 17th of October, 1856, to reconcile these opposing contentions and to place the absolute and independent sovereignty of Nicaragua over its territory on an unmistakable footing, so far as the United States and Great Britain were concerned, failed to be completed by reason of the rejection by Her Majesty's Government of an amendment introduced by the Senate into the Clarendon-Dallas project. From that time onward the inability of the two governments to agree upon a common interpretation of the letter and spirit of the Clayton-Bulwer treaty may be accepted as a historical fact.

In the discussions between the two governments which attended the failure of the Clarendon-Dallas treaty the attitude of the United States with respect to the Clayton-Bulwer treaty was amply defined. As early as the 12th of March, 1857, I find that General Cass, then Secretary of State, in the course of a conference with Lord Napier, Her Majesty's representative,

> Passed some reflections on the Clayton-Bulwer treaty; he had voted for it, and in doing so he believed that it abrogated all intervention on the part of England in the Central American territory. The British Government had put a different construction on the treaty, and he regretted the vote he had given in its favor. (Dispatch of Lord Napier to the Earl of Clarendon, March 12, 1857.)

On the 6th of May, 1857, President Buchanan, in an audience given to Lord Napier, and in response to his lordship's suggestion that if the attempted adjustment of the difference between the governments as to the Clarendon-Dallas treaty should fail, the Clayton-Bulwer treaty remained to fall back upon, characterized that instrument in much stronger terms than General Cass had done. To quote Lord Napier's words:

> The President denounced the Clayton-Bulwer treaty as one which has been fraught with misunderstanding and mischief from the beginning. It was concluded under the most opposite constructions by the contracting parties. If the Senate had imagined that it could obtain the interpretation placed upon it by Great Britain it would not have passed. If he had been in the Senate at the time that treaty never would have been sanctioned. (Dispatch of Lord Napier to the Earl of Clarendon, May 6, 1857.)

These views are more explicitly and formally repeated in a note addressed by Secretary Cass to Lord Napier on the 29th of May, 1857. He says:

> The Clayton-Bulwer treaty, concluded in the hope that it would put an end to the differences which had arisen between the United States and Great Britain concerning Central American affairs, had been rendered inoperative in some of its most essential provisions by the different constructions which had been reciprocally given to it by the parties. And little is hazarded in saying that, had the interpretation since put upon the treaty by the British Government, and yet maintained, been anticipated, it would not have been negotiated under the instructions of any Executive of the United States nor ratified by the branch of the government intrusted with the power of ratification.

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The publicity of these statements, and the strong feeling which then prevailed in all quarters that the Clayton-Bulwer convention was inadequate to reconcile the opposite views of Great Britain and the United States towards Central America, led to a very decided conviction that the treaty should be abrogated. Lord Napier reflected this growing impression when, on the 22d of June, 1857, he wrote to Lord Clarendon that—

> It is probable that if the pending discussions regarding Central America be not closed during the present summer, an attempt will be made in the next session of Congress to set aside the Clayton-Bulwer treaty. * * * There can be no doubt of the views of the President and Cabinet on this matter.

Before this tendency could, however, find its expression in any official act, a movement on the part of Her Majesty's Government placed the whole matter in a new aspect. Sir William Gore Ouseley was sent out, October 30, 1857, as a special minister, with the double purpose of concluding with the Central American States, and especially with Guatemala and Honduras, settlements of the questions relative to the Bay Islands, the Mosquito territory, and the boundaries of British Honduras, and also of visiting Washington on the way, and conferring with the Secretary of State of the United States for the purpose of ascertaining the views of his government, and establishing "a perfect understanding with the United States upon the points respecting which differences have hitherto existed between the two countries."

Among these differences was now superadded to the territorial question of Mosquito and the islands, the very question which to-day most concerns us, the question of interoceanic communication, which had for some time been the occasion of correspondence between General Cass and Lord Napier, and in relation to which General Cass wrote, on the 20th of October, 1857, as follows:

> I have thus endeavored to meet the frank suggestions of your lordship by restating with corresponding frankness the general policy of the United States with respect to the governments and the interoceanic transits of Central America. But since your lordship has referred to the Clayton-Bulwer treaty of 1850, as contemplating a harmonious course of action and counsel between the contracting parties in the settlement of Central American interests, you will pardon me for reminding your lordship that the differences which this treaty was intended to adjust between the United States and Great Britain still remain unsettled, while the treaty itself has become the subject of new and embarrassing complications.

Prior to the arrival of Sir William Ouseley in the United States Lord Napier held an important interview with President Buchanan on the 19th of October, 1857, with the object of obtaining "further elucidation of the opinions of the President with reference to the adjustment of the Clayton-Bulwer treaty." On that occasion Lord Napier declared that he believed it the intention of Her Majesty's Government, in Sir William Ouseley's mission, "to carry the Clayton-Bulwer treaty into execution according to the general tenor of the interpretation put upon it by the United States; but to do so by separate negotiation with the Central American republics, in lieu of a direct engagement with the Federal Government," and asked that, pending the negotiation intrusted to Sir William Ouseley, "no proposal to annul the [Clayton-Bulwer] treaty would be sanctioned or encouraged" by the President or the members of the United States Government. To this the President cheerfully consented, and promised to modify the statements in his annual message to Congress accordingly, and under no circumstances to countenance any attempt against the Clayton-Bulwer treaty in Congress.

Matters being in this state, with Sir William Ouseley's mission announced, and the benevolently expectant attitude of the United States

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toward it assured, Lord Napier, on the 27th of October, 1857, in conference with General Cass, brought up contingently, as a discarded alternative of his government, a former proposal to refer the disputed questions to arbitration.

The general remarked in reply [says Lord Napier, writing to the Earl of Clarendon] that he did not repudiate the principle of arbitration on all occasions; he had invoked it, and would do so again where it seemed justly applicable; but that in this matter it was declined by the American Government for the following reasons: The language of the treaty was so clear that in his opinion there ought not to be two opinions about it. * * * Then it was a mere question of the interpretation of the English language, and he held that a foreign government was not so competent to decide in such a question as the United States and England, who possessed that language in common.

The Earl of Clarendon, in reply, approved of Lord Napier's course in broaching anew the suggestion of arbitration, and authorized him to renew formally in writing the offer to refer the disputed questions arising out of the interpretation of the Clayton-Bulwer treaty to the decision of any European power (instruction of November 13, 1857), and this was accordingly done by Lord Napier in a note to General Cass dated November 30, 1857.

In his annual message to Congress in December, 1857, President Buchanan, after narrating the negotiation and failure of the Clarendon-Dallas treaty, said:

The fact is, that when two nations like Great Britain and the United States, mutually desirous as they are, and I trust ever may be, of maintaining the most friendly relations with each other, have unfortunately concluded a treaty which they understand in senses directly opposite, the wisest course is to abrogate such a treaty by mutual consent and to commence anew. * * * Whilst entertaining these sentiments, I shall nevertheless not refuse to contribute to any reasonable adjustment of the Central American questions which is not practically inconsistent with the American interpretation of the treaty. Overtures for this purpose have been recently made by the British Government in a friendly spirit, which I cordially reciprocate.

Meanwhile the Earl of Clarendon had instructed Sir William Ouseley, under date of November 19, 1857, "not to commit Her Majesty's Government to any course whatever in respect to the Bay Islands till the intentions of the Congress of the United States in regard to the treaty of 1850 are clearly ascertained."

The situation, then, at the close of 1857 presented a triple dead-lock. The United States had agreed not to move toward the abrogation of the treaty until it could be seen what interpretation of its provisions would result from Sir William Ouseley's mission. Sir William had received positive instructions not to move until the United States should decide whether to abrogate the treaty or not, and Lord Napier was forbidden to move until the United States should make formal answer to the proposal for arbitration. The instructions of Lord Clarendon to Lord Napier, January 22, 1858, contained these words:

We are decidedly of opinion that it would neither be consistent with our dignity or our interest to make any proposal to the United States Government until we have received a formal answer to our formal offer of arbitration. In event of the offer being refused, it will be a great and hardly justifiable proof of the spirit of conciliation by which we are animated if we then show ourselves disposed to abrogate the Clayton-Bulwer treaty; but we must not be in too great haste.

In order, apparently, to break this dead-lock, Lord Napier wrote to General Cass, February 17, 1858, that—

Something in the nature of an alternative was thus offered to the American Cabinet. Should the expedient of arbitration be adopted a great portion of Sir William Ouseley's duty would be transferred to other agencies. Should arbitration be declined, it was hoped that the efforts of Her Majesty's envoy would result in a settlement agreeable to the United States, inasmuch as in essential points it would carry the treaty of 1850 into operation in a manner practically conformable to the American interpretation of that instrument.

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On the 10th of March, 1858, the Earl of Malmesbury, who had succeeded Lord Clarendon in the foreign office, instructed Lord Napier that until an answer was returned to the proposal for arbitration "no further steps can be taken by Her Majesty's Government with that of the United States in regard to that matter;" and, further, that—

When this point is cleared up, Her Majesty's Government, supposing that the Government of the United States decline arbitration, will have to determine whether they should originate a proposal for the abrogation of the Clayton-Bulwer treaty or adopt any other course which the circumstances at the moment may seem to recommend.

It appears, however, that the proposal to abrogate the treaty which Lord Malmesbury reserved the right to originate had already been communicated to the Government of the United States by Lord Napier, under instructions from Lord Clarendon. In a dispatch dated March 22, 1858, Lord Napier wrote:

The Earl of Clarendon authorized me to inform General Cass that Her Majesty's Government would not decline the consideration of a proposal for the abrogation of the treaty by mutual concert. * * * I have, accordingly, on two occasions, informed General Cass that if the Government of the United States be still of the same mind, and continue to desire the abrogation of the treaty of 1850, it would be agreeable to Her Majesty's Government that they should insert a proposal to that effect in their reply to my note respecting arbitration.

Lord Napier further reports in detail the conversations had with General Cass as to the most proper method of affecting such abrogation, if agreed to.

In reply to this dispatch of Lord Napier, the Earl of Malmesbury instructed him, April 8, 1858, that his action was approved, and that he should confine himself to pressing for an answer to his proposal for arbitration. His lordship added these significant words:

Her Majesty's Government, if the initiative is still left to them by the unwillingness of the United States themselves to propose abrogation, desire to retain full liberty as to the manner and form in which any such proposal shall be laid on their behalf before the Cabinet at Washington. * * * The Clayton-Bulwer treaty has been a source of unceasing embarrassment to this country, and Her Majesty's Government, if they should be so fortunate as to extricate themselves from the difficulties which have resulted from it, will not involve themselves, directly or indirectly, in any similar difficulties for the future.

The answer of General Cass to Lord Napier's several proposals was, briefly, to the effect that pending the results expected from Sir William Ouseley's mission to the Central American States the United States could not adopt the alternative of arbitration, "even if it had not been twice rejected before," and, that if—

The President does not hasten to consider now the alternative of repealing the treaty of 1850, it is because he does not wish prematurely to anticipate the failure of Sir William Ouseley's mission, and is disposed to give a new proof to Her Majesty's Government of his sincere desire to preserve the amicable relations which now happily subsist between the two countries. (General Cass to Lord Napier, April 6, 1858.)

In this posture of affairs the Earl of Malmesbury instructed Sir William Ouseley to open direct negotiations with the Central American States, and on the 18th of August instructed Lord Napier to inform the Government of the United States of the intentions and object of her Majesty's Government in the premises. His lordship added:

Modification, arbitration, and abrogation of the Clayton-Bulwer treaty have been *flatly rejected* [the italics are my own]. Great Britain and Nicaragua are now about to treat as independent States.

I have emphasized the phrase "flatly rejected" in view of a subse-

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quent instruction of the Earl of Malmesbury to Lord Napier on the 8th of December, 1858, wherein he said:

> I think you would have done better if you had not too pointedly brought before the United States Government the notion that the British Government might view with favor a proposal to abrogate the Clayton-Bulwer treaty.

It is not difficult, in following this narrative, to discern that General Cass, though not desiring to express it, had an additional motive for declining at that particular time to propose the abrogation of the Clayton-Bulwer treaty. He did not desire by such proposed abrogation to indicate his willingness that Sir William Gore Ouseley should make treaties with the separate states of Central America, unrestrained by the clauses of the Clayton-Bulwer treaty inhibiting the extension of British power in that region. General Cass, with his accustomed caution and wisdom, clearly perceived that for the United States to propose abrogation on the very eve of Sir William Ouseley's mission would lead to injurious inferences, and would imply conclusions which the United States was not prepared to admit.

Objectionable as General Cass thought the Clayton-Bulwer treaty, he thought it was better than giving the implied consent of this government that Great Britain should obtain such treaties as the force of her power might secure in Central America.

The subsequent note of Lord Malmesbury, not strained by an uncharitable construction, throws additional light on the subject, and confirms the wisdom of General Cass in declining to propose abrogation at that time. And, besides, General Cass evidently desired to retain those very clauses of the Clayton-Bulwer treaty to which, in my dispatch of the 19th, I proposed on the part of this government to adhere.

I have dwelt with somewhat of detail on this particular historic episode, partly because it admirably illustrates the spirit with which both governments have regarded the Clayton-Bulwer treaty from the first, and partly because it had more direct bearing on the question of the guarantee of any isthmian transit than any other discussion of the time. In perusing the voluminous correspondence, unprinted as well as that printed and submitted at the time to Congress and to Parliament, I am more than ever struck by the elastic character of the Clayton-Bulwer treaty, and the admirable purpose it has served as an ultimate recourse on the part of either government to check apprehended designs in Central America on the part of the other; although all the while it was frankly admitted on both sides that the engagements of the treaty were misunderstandingly entered into, imperfectly comprehended, contradictorily interpreted, and mutually vexatious.

I am, as I must confess, strengthened in this impression by the circumstance that, in his response to my dispatch of the 24th of June last, Earl Granville takes the ground that the position of Great Britain and the United States toward the projected Panama Canal is determined by the Clayton-Bulwer treaty. It does not seem likely to become a subject for discussion how far the engagements of that compact in reality extend to the Isthmus of Panama under the provisions of Article VIII thereof in the same precise sense in which they extend to the projected Nicaraguan transit.

For it will be observed that this article does not stretch the guarantees and restrictions of Article I over either the Tehuantepec route through Mexican territory or the Panama route through Colombian territory. It is in terms an agreement to extend the protection of both countries, by treaty stipulations, to those or any other practicable water-

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ways or railways, from ocean to ocean, across the Isthmus, outside of Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America. So far as this inchoate agreement to hereafter agree is applicable to the Panama transit, I have amply shown, in my No. 270 of the 19th instant, that the obligations embraced on the part of the United States in concluding the prior convention with the Republic of New Granada (now Colombia) in 1846 require that the United States should be freed from unequal and inequitable obligations to Great Britain under the vague and, as yet, unperfected compact of 1850.

My main object in writing this instruction has been to strengthen your hands in any discussion which may now ensue as to the benefits of the Clayton-Bulwer treaty and the mutual interest of the two countries in conserving it as the basis of a settlement of all disputes between them touching Central American and isthmian questions. It will be seen that, from the time of its conclusion in 1850 until the end of 1858, its provisions were thrice made the basis of a proposal to arbitrate as to their meaning, that modification and abrogation have been alike contingently considered, and that its vexatious and imperfect character has been repeatedly recognized on both sides. The present proposal of this government is to free it from those embarrassing features, and leave it, as its framers intended it should be, a full and perfect settlement, for all time, of all possible issues between the United States and Great Britain with regard to Central America.

If in your conferences with Earl Granville it should seem necessary, you will make free use of the precedents I have cited, and should you, within the discretionary limits confided at the end of my No. 270, have given a copy thereof to his lordship, you are equally at liberty to let him have a copy of this also, with the same explanation, that it is for you use, and not written as a formal note for communication to Her Majesty's Government.

I am, &c.,

JAMES G. BLAINE.

72.—*Mr. Lowell to Mr. Blaine.*

No. 266.] LEGATION OF THE UNITED STATES,
London, December 15, 1881. (Received December 29.)

SIR: I have the honor to acquaint you that on the 13th instant I had an interview with Lord Granville at the foreign office, and communicated to him the substance of your instruction No. 270, of the 19th ultimo. I then, at his request, read it to him, beginning, however, with the concluding paragraph, for obvious reasons. At his desire I left a copy with him.

I thought it wiser, in a matter of so much moment, that he should receive the views of the President as they were conveyed in the dispatch, rather than, perhaps, to weaken their force by communicating them in my own manner, as I was authorized by you to do.

Lord Granville listened with great attention, and merely said that he should reserve his answer.

I have, &c.,

J. R. LOWELL.

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73.—*Mr. Lowell to Mr. Blaine.*

No. 277.] LEGATION OF THE UNITED STATES,
London, December 27, 1881. (Received January 9, 1882.)

SIR: I have the honor to report that so soon as I received your instruction No. 281, the 29th ultimo, I addressed a private note to Lord Granville informing him of the fact, and asking him when it would be convenient for him to favor me with an interview. In his reply he asked me if I could come to him at Walmer, where he was detained by the hospitalities of the Christmas season. Thinking it important that he should see the dispatch as soon as possible, because it was so nearly related to your No. 270, I accordingly went down to Walmer on the 23d instant. I there read the dispatch to him, and at his desire left a copy of it with him. I did not think it prudent or proper to enter upon any discussion with Lord Granville upon the general topics of the dispatch, but as some of the newspapers here had criticised it as untimely, I thought it not out of place to remind him that the policy of the United States had already been clearly indicated in a message to Congress by President Hayes, and more strongly reiterated in the same public manner by President Garfield.

Lord Granville was, as usual, exceedingly courteous and friendly, but made no remark except that the publication of No. 270, before an opportunity was given him of replying to it, "seemed to him, to say the least, unusual."

I have, &c.,

J. R. LOWELL.

74.—*Lord Granville to Mr. West.*

FOREIGN OFFICE, *January 7, 1882.*

SIR: In my dispatch No. 279*a* of the 13th ultimo I informed you that the United States minister at this court had communicated to me the substance of a dispatch which he had received from Mr. Blaine, then Secretary of State, on the subject of the convention of the 19th April, 1850. Finding that Mr. Lowell was authorized to give me a copy of this dispatch, if I wished it, I requested him to do so, and I have already forwarded to you a copy for you information.

Her Majesty's Government have given their careful consideration to the views set forth in this paper. They entirely agree in the statement made towards its conclusion as to the cordial relations so happily existing between the two countries, and as to the opportunity which this state of things affords for a frank exposition of the views held by either government without risk of misconstruction. They have no hesitation, therefore, in proceeding to examine the grounds advanced by Mr. Blaine for desiring a modification of the convention.

The principles upon which the whole argument of the dispatch is founded are, as far as I am aware, novel in international law. If a discussion of the subject on the abstract grounds of public right were deemed useful or opportune, it would not be difficult to quote passages from publicists of acknowledged authority in both countries in support of this opinion. But for several reasons it will be better to treat the matter from the side of the practical consideration which it involves,

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without, of course, being precluded from reverting at any future stage, in case of need, to its other aspect.

Her Majesty's Government cannot admit that the analogy which it is sought to draw from the conduct of Great Britain in regard to the Suez Canal is correct or justified by the facts. They have made no attempt to fortify the island of Cyprus, or to establish it as an armed position on an important scale, though they have an undoubted right to do so. The fortress of Gibraltar, the island of Malta, and the military establishment at Aden came into the possession of England at a date long anterior to the time when the Mediterranean and the Red Sea could be regarded as a military route to India. For years afterwards the whole mass of reenforcements for India was sent by the way of Cape of Good Hope. Nor has any serious addition been made to the strength of these positions since the opening of the canal beyond what has been a natural consequence of the improvements in military science. Although no doubt well adapted by its situation to command the Straits of Bab-el-Mandeb, the Island of Perim has not in any real sense been made a fortified position. The fort and garrison on the island are, in fact, sufficient only to protect the light-house, which has been erected there for the general benefit of navigation, from possible attack by predatory Arabs.

The Navy Department of the United States must be well aware that Her Majesty's Government have never sought to bar or even to restrict the use of the canal by the naval forces of other countries, and that even during the recent war between Russia and Turkey, when the canal itself formed a portion of the territory of one of the belligerents, when the seat of conflict was close at hand, and when British interests might in many other respects have been nearly involved, they contented themselves with obtaining an assurance that the sphere of operations should not be extended to the canal.

Her Majesty's Government cordially concur in what is stated by Mr. Blaine as regards the unexampled development of the United States on the Pacific coast, and the capacity which they possess for further progress. That development has been watched in this country with admiration and interest, and will continue to be so regarded. But though in rapidity it may, and probably has, exceeded the most sanguine calculation, Her Majesty's Government cannot look upon it in the light of an unexpected event, or suppose that it was not within the view of the statesmen who were parties on either side to the Clayton-Bulwer treaty. The declarations of President Monroe and of his cabinet, in 1823 and 1824, whatever may be the view taken of their scope and bearing, and of the admissibility of the principles which they involve, or which it is sought to deduce from them, show at least that at that period—twenty-six years anterior to the treaty now under discussion—there was a clear prevision of the great future reserved to the Pacific coast. It is, in the opinion of Her Majesty's Government, an inadmissible contention that the regular and successful operation of causes so evident at the time, and in their nature so irrepressible, should be held to have completely altered the condition of affairs to the extent of vitiating the foundations of an agreement which cannot be supposed to have been concluded without careful thought and deliberation.

While recognizing to the fullest degree the extent to which the United States must feel interested in any canal which may be constructed across the Isthmus of Panama, Her Majesty's Government would be wanting in regard to their duty if they failed to point out that Great Britain has large colonial possessions, no less than great commercial interests, which render any means of unobstructed and rapid access from the Atlantic to

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the North and South Pacific Oceans a matter for her also of the greatest importance.

The development of these possessions and interests has steadily continued, possibly with less rapidity, but on a scale which has some relation even to that of the Pacific States. Her Majesty's Government do not wish to ignore the share which other nations have acquired in the commerce of Central and South America, nor to exclude from consideration the interest of those countries in any canal which may be made across the Isthmus. They are of opinion that such a canal as the waterway between two great oceans and between all Europe and Eastern Asia is a work which concerns not merely the United States or the American Continent, but the whole civilized world. This is a view which finds its expression in the VIth article of the treaty of 1850. Her Majesty's Government are as anxious as that of the United States that, while all nations should enjoy their proper share in the benefits to be expected from the undertaking, no single country should acquire a predominating influence or control over such a means of communication; and they will not oppose or decline any discussion for the purpose of securing on a general international basis its universal and unrestricted use.

With all deference to the considerations which have prompted the proposals made in Mr. Blaine's dispatch, Her Majesty's Government cannot believe that they would promote this object or be beneficial in themselves. The relations of the United States with the European powers are fortunately of a nature to give rise to no feelings of suspicion or alarm. The general tendency of their foreign policy gives good promise that they will so continue. But if provision is to be made on one side for a different state of affairs, it must be expected that the course thus indicated will find its natural and logical counterpart on the other. Her Majesty's Government can conceive no more melancholy spectacle than a competition among the nations holding West Indian possessions, and others on the Central and South American Continent, in the construction of fortifications to obtain the command over the canal and its approaches, in the event of occasion arising for such a measure. They cannot believe that it would be agreeable or convenient to any South American state through which the canal may pass to find itself called upon to admit a foreign power to construct and garrison on its territory a succession of fortresses of increasing magnitude, designed to oppose such attempts, even though that foreign power be a neighboring one and situated upon the same continent. And when the claim to do this is accompanied by a declaration that the United States will always insist on treating the water-way which shall unite the two oceans "as part of her coast line," it is difficult to imagine that the states to which the territory lying between that water-way and the United States belongs can practically retain as independent a position as that which they now enjoy.

These are the consequences which, in the conviction of Her Majesty's Government, would almost certainly follow from a claim on the part of the United States to assume the supreme authority over the canal and all responsibility for its control. Her Majesty's Government hold, on the contrary, that the principles which guided the negotiators of the convention of 1850 were intrinsically sound, and continue to be applicable to the present state of affairs. Their wish would be that those principles should receive the practical development which was contemplated at the time; and that effect should be given to that portion of the treaty which provides that the contracting parties shall invite all other states with whom they have friendly intercourse to enter into similar stipulations with them.

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A certain amount of progress was made in this direction by the conclusion of conventions with Honduras and Nicaragua by Great Britain in 1856 and 1860, and by the United States in 1864 and 1867, and by Nicaragua with France in 1859, with the object of upholding the general principles inserted in the treaty. During the period when there were still matters to regulate with respect to Grey Town, the Bay Islands, the frontier of British Honduras, and the protection of the Mosquito Indians, and when the construction of a canal still seemed a contingency more or less doubtful and remote, it was not strange that the engagement to address other powers should have been allowed to remain dormant; but the project of the canal has now assumed sufficient shape to render such an application reasonable and pertinent.

Her Majesty's Government believe that the extension of an invitation to all maritime states to participate in an agreement based on the stipulations of the convention of 1850 would obviate any objection that may possibly be raised against it as not being adequate in its present condition for the purpose for which it was designed. This course formed the basis of Mr. Fish's proposal to Dr. Cardenas, the Nicaraguan minister, in 1877; and Her Majesty's Government would gladly see the United States again take the initiative in an invitation to the powers, and will be prepared either to join it or to support and indorse it in the way that may be found most fitting and convenient, provided it does not conflict in any way with the Clayton-Bulwer treaty.

You are authorized to read this dispatch to the Secretary of State, and to give him a copy of it if he should desire it.

I am, &c.,

GRANVILLE.

The Hon. LIONEL S. S. WEST.

75.—*Lord Granville to Mr. West.*

No. 8. FOREIGN OFFICE, *January 14, 1882.*

SIR: In my dispatch 296 of the 31st ultimo I have forwarded to you a copy of a dispatch from Mr. Blaine to the United States minister at this court, containing further observations in support of his arguments and proposal for a modification of the treaty between this country and the United States of the 19th of April, 1850. In this dispatch Mr. Blaine gives extracts from the correspondence which passed between the two governments between 1856 and 1858, in consequence of questions that arose as to the construction to be placed on certain provisions of the treaty. Mr. Blaine seeks to establish from these extracts that "the vexatious and imperfect character of the treaty has been repeatedly recognized on both sides;" and he adds that the present proposal of the United States Government "is to free it from those embarrassing features, and to leave it, as its framers intended it should be, a full and perfect settlement, for all time, of all possible issues between the United States and Great Britain with regard to Central America."

The correspondence in question was laid before Parliament in 1860, and the principal papers included in it have also been published in Hertslet's State Papers.* A reference to the context of the passages quoted by Mr. Blaine will be necessary in order to appreciate the character which Mr. Blaine has attributed to them.

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* Vol. xl, p. 953; xli, p. 757; xlii, p. 153; xlvi, p. 244; xlvii, p. 661; xlviii, p. 630; L, p. 126.

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In cases where the details of an international agreement have given rise to difficulties and discussions to such an extent as to cause the contracting parties, at one time, to contemplate its abrogation or modification as one of several possible alternatives, and where it has yet been found preferable to arrive at a solution as to those details rather than to sacrifice the general basis of the engagement, it must surely be allowed that such a fact, far from being an argument against that engagement, is an argument distinctly in its favor. It is equally plain that either of the contracting parties which had abandoned its own contention for the purpose of preserving the agreement in its entirety would have reason to complain if the differences which had been settled by its concession were afterwards urged as a reason for essentially modifying those other provisions which it had made this sacrifice to maintain. That both these arguments apply in the present instance a brief review of the correspondence will, I think, suffice to show.

The treaty of 1850 was concluded (as is declared in the VIIIth Article) with the desire "not only to accomplish a particular object, but also to establish a general principle" in regard to the protection, by treaty stipulations, of any practical communications, whether by canal or railway, across the isthmus which connects North and South America.

The preamble and first article of the treaty run as follows:

Her Britannic Majesty and the United States of America, being desirous of consolidating the relations of amity which so happily subsist between them, by setting forth and fixing in a convention their views and intentions with reference to any means of communication by ship-canal, which may be constructed between the Atlantic and Pacific Oceans, by the way of the river St. Juan de Nicaragua, and either or both of the lakes of Nicaragua or Managua, to any port or place on the Pacific Ocean; * * *

ART. I. The Governments of Great Britain and the United States hereby declare that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said ship-canal; agreeing that neither will ever erect or maintain any fortifications commanding the same, or in the vicinity thereof, or occupy, or fortify, or colonize, or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America; nor will either make use of any protection which either affords, or may afford, or any alliance which either has, or may have, to or with any state or people, for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America, or of assuming or exercising dominion over the same. Nor will Great Britain or the United States take advantage of any intimacy, or use any alliance, connection, or influence that either may possess with any state or government through whose territory the said canal may pass, for the purpose of acquiring or holding, directly or indirectly, for the subjects or citizens of the one, any rights or advantages in regard to commerce or navigation through the said canal which shall not be offered, on the same terms, to the subjects or citizens of the other.

Soon after the signature of the treaty various discussions arose as to the interpretation to be put upon those clauses which debarred either of the contracting parties from occupying, fortifying, or colonizing, or assuming or exercising any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America, &c. Great Britain being at the time in possession of Ruatan and other islands off the coast of Honduras, and having a protectorate over the Mosquito Indians located on the coast of Nicaragua, a lengthened correspondence arose as to the effect to be given to the treaty in this respect, and also as to the boundary of British Honduras. A treaty was eventually signed by Lord Clarendon and Mr. Dallas for the settlement of the various questions at issue on the 17th October, 1856; but this agreement was not received with favor by the United States Senate, and the incoming government of President Buchanan, who had acceded to office in March, 1857, declined to confirm it without certain modifications. To these the British Government proposed further amendments, which were not at that time

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deemed acceptable by that of the United States, and the treaty was never formally ratified.

To show how far this part of the discussion belonged in some of its features to a state of affairs that is now past, one of the objections taken by General Cass to the treaty in its last amended form was that it involved a recognition by the United States of a treaty between Great Britain and Honduras for the cession of the Bay Islands to the latter country, in which it was stipulated that slavery should not at any time be permitted to exist there. General Cass stated that "a treaty with such a provision would never be recognized by a United States Senate." (Lord Napier to Lord Clarendon, May 3, 1857.)

I now proceed to examine some of the extracts given in Mr. Blaine's dispatch.

The first paper quoted is one from Lord Napier to the Earl of Clarendon, dated the 12th March, 1857.

The only passage quoted is as follows:

General Cass then passed some reflections on the Clayton-Bulwer treaty; he had voted for it, and in doing so he believed that it abrogated all intervention on the part of England in the Central American territory. The British Government had put a different construction on the treaty, and he regretted the vote he had given in its favor.

But the dispatch goes on to say:

He did not, however, pretend that the British Government should now unconditionally abandon the Mosquitos, with whom they had relations of an ancient date; it was just and consistent with the practice of the United States that those Indians should be secured in the separate possession of lands, the sale of which should be prohibited, and in the enjoyment of rights and franchises, though in a condition of dependency and protection. The British Government had already removed one impediment to the execution of the Bulwer-Clayton treaty by the cession of their claims on Ruatan; two difficulties now remained—the frontier of Belize, and the delimitation and settlement of the Mosquito tribe. If the frontier could be defined, and if the Mosquitos could be placed in the enjoyment of their territory by treaty between Great Britain and Nicaragua, in which the concessions and guarantees of the latter in favor of the Indians should be associated with the recognition of the sovereignty of Nicaragua—so I understood the general—*then the Bulwer-Clayton treaty might be a permanent and satisfactory settlement between the contracting parties;* the United States desiring nothing else than an absolute and entire neutrality and independence of the Central American region, free from the exercise of any exclusive influence or ascendency whatever.

The next quotation is from another dispatch of Lord Napier, dated the 6th May, 1857, and the passage given runs thus:

The President denounced the Clayton-Bulwer treaty as one which had been fraught with misunderstanding and mischief from the beginning; it was concluded under the most opposite constructions by the contracting parties. If the Senate had imagined that it could obtain the interpretation placed upon it by Great Britain, it would not have passed. If he had been in the Senate at the time, that treaty never would have been sanctioned.

But President Buchanan went on to say:

With reference to arbitration (which Lord Napier had only thrown in as a suggestion of his own), he could not give any opinion at present. The President also inveighed against the excess of treaties, affirming that they were more frequently the cause of quarrel than of harmony, and that if it were not for the interoceanic communications he did not see there was any necessity for a treaty respecting Central America at all.

It seems, therefore, that the President's condemnation of the Clayton-Bulwer treaty was principally founded on the construction placed upon it by Great Britain at the time, and was also in some measure explained by his objections to treaties in general, but that he admitted that the question of the interoceanic connection made such an agreement necessary.

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Mr. Blaine then quotes a note from Mr. Cass to Lord Napier, of the 29th May, 1857, as follows:

The Clayton-Bulwer treaty, concluded in the hope that it would put an end to the differences which had arisen between the United States and Great Britain concerning Central American affairs, had been rendered inoperative in some of its most essential provisions by the different constructions which had been reciprocally given to it by the parties. And little is hazarded in saying that, had the interpretation since put upon the treaty by the British Government, and yet maintained, been anticipated, it would not have been negotiated under the instructions of any Executive of the United States, nor ratified by the branch of the government intrusted with the power of ratification.

But how does General Cass continue? He goes on to say:

A protracted discussion, in which the subject was exhausted, failed to reconcile the conflicting views of the parties; and, as a last resort, a negotiation was opened for the purpose of forming a supplementary treaty which should remove, if practicable, the difficulties in the way of their mutual good understanding, and leave unnecessary any further discussion of the controverted provisions of the Clayton-Bulwer treaty. It was to effect this object that the Government of the United States agreed to open the negotiations which terminated in the treaty of the 17th October, 1856, and though the provisions of that instrument, even with the amendments proposed by the Senate, were not wholly unobjectionable either to that body or to the President, still, *so important did they consider a satisfactory arrangement of this complicated subject*, that they yielded their objections, and sanctioned, by their act of ratification, the convention as amended. It was then transmitted to London for the consideration of Her Britannic Majesty's Government, and, having failed to meet its approbation, has been returned unratified. The parties are thus thrown back upon the Bulwer-Clayton treaty, with its disputed phraseology and its conflicting interpretations; and, after the lapse of seven years, not one of the objects connected with the political condition of Central America which the United States had hoped to obtain by the arrangement has been accomplished.

It was not, therefore, to the principles or basis of the arrangement (the importance of which was fully recognized), but to the unfortunate phraseology of a single portion of the treaty, that objection was taken.

Mr. Blaine then refers to Sir W. Gore Ouseley's mission, the object of which was to settle the points at issue, in a manner practically satisfactory to the United States, by independent negotiations with the Central American States, after first communicating with the government at Washington. Mr. Blaine quotes a passage from a letter of General Cass to Lord Napier of the 20th October, 1857, as follows:

I have thus endeavored to meet the frank suggestions of your lordship by restating, with corresponding frankness, the general policy of the United States with respect to the governments and the interoceanic transits of Central America; but since your lordship has referred to the Clayton-Bulwer treaty of 1850, as contemplating a "harmonious course of action and counsel between the contracting parties in the settlement of the Central American interests," you will pardon me for reminding your lordship that the differences which this treaty was intended to adjust between the United States and Great Britain still remain unsettled, while the treaty itself has become the subject of new and embarrassing complications.

It will be useful to refer to the previous portion of this note to show what was the statement of the "general policy of the United States" thus referred to, and how far that policy corresponds with Mr. Blaine's present proposals. The note begins thus:

I have the honor to receive your lordship's communication of the 9th instant, in reference to the existing relations between Nicaragua and Costa Rica, and have submitted it to the consideration of the President.

These relations have attracted the earnest attention of the President, not only from the importance of the San Juan transit to the commerce of the world, but from the interest which is naturally felt by the United States in the neighboring republics of this continent. The President has witnessed, therefore, the restoration of peace to Nicaragua and Costa Rica with the highest gratification; and he sincerely hopes that it may not again be interrupted, either by the calamity of civil war or the invasion of their territory from other countries. Their security and welfare would undoubtedly

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be promoted by a just and friendly settlement between them of their mutual boundaries and jurisdiction; and I need hardly add that such an adjustment would be viewed with satisfaction by the United States. This government, however, has never admitted the pretensions of Costa Rica to an equal control with Nicaragua of the San Juan River, but has regarded the sovereignty of the river, and consequently of the interoceanic transit by that route, as rightfully belonging to the Republic of Nicaragua.

A similar view of the question appears to have been recognized by Great Britain; and, whatever may be the rights of Costa Rica with respect to the free passage of her own products by the river to the ocean, it is better, probably, that what has been thus acquiesced in, and has led, moreover, to important contracts and responsibilities, should not now be disturbed. But under any circumstances the commercial nations of the world can never permit the interoceanic passages of the isthmus to be rendered useless for all the great purposes which belong to them in consequence of the neglect or incapacity of the states through whose territories they happen to run. *The United States, as I have before had occasion to assure your lordship, demand no exclusive privileges in these passages*, but will always exert their influence to secure their free and unrestricted benefits, both in peace and war, to the commerce of the world.

And in a later note to Lord Napier, of the 8th November, 1858, General Cass states with still greater clearness the object with which the treaty was concluded, and the grounds on which the difference between the two governments had arisen. He says:

Since the announcement by your lordship, in October, 1857, of Sir William Ouseley's special mission, the President has awaited, not so much any new proposition for the adjustment of the Central American questions as the statement in detail, which he had been led to expect, of the method by which Sir William Ouseley was to carry into effect the previous proposition of the British Government. To make this plain, your lordship will pardon me for making a brief reference to what has occurred between the two governments in respect to Central America since the ratification of the Clayton-Bulwer treaty of 1850.

While the declared object of that convention had reference to the construction of a ship-canal by the way of San Juan and the Lakes of Nicaragua and Managua, from the Atlantic to the Pacific Ocean, *yet it avowed none the less plainly a general principle in reference to all practicable communications across the isthmus, and laid down a distinct policy by which the practical operation of this principle was likely to be kept free from all embarrassment. The principle was that the interoceanic routes should remain under the sovereignty of the states through which they ran, and should be neutral and free to all nations alike. The policy was that, in order to prevent any government outside of those states from obtaining undue control or influence over those interoceanic transits, no such nation should erect or maintain any fortifications commanding the same, or in the vicinity thereof, or should "occupy, or fortify, or colonize, or assume, or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America."* So far as the United States and Great Britain were concerned, those stipulations were expressed in unmistakable terms; and in reference to other nations, it was declared that the "contracting parties in this convention engage to invite every state with which both or either have friendly intercourse to enter into stipulations with them similar to those which they have entered into with each other.

At that time the United States had no possessions whatever in Central America, and exercised no dominion there. In respect to this government, therefore, the provisions of Article I of the treaty could operate only as a restriction for the future; but Great Britain was in the actual exercise of dominion over nearly the whole eastern coast of that country, and, in relation to her, this article had a present as well as a prospective operation. She was to abandon the occupancy which she already had in Central America, and was neither to make acquisitions, or erect fortifications, or exercise dominion there in the future. In other words, she was to place herself in the same position with respect to possessions and dominion in Central America which was to be occupied by the United States, and which both of the contracting parties to the treaty engaged that they would endeavor to induce other nations to occupy.

This was the treaty as it was understood and consented to by the United States, and this is the treaty as it is still understood by this government.

He then recapitulates the discussions and abortive negotiations which had ensued in consequence of the different interpretations put upon the treaty by the two governments; and, after criticising and expressing disappointment at the last communication made to him by Lord Napier, he concludes:

It is of no small consequence either to the United States or Great Britain that these Central American controversies between the two countries should be forever

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closed. On some points of them, and, I have been led to hope, on the general policy which ought to apply to the whole isthmian region, they have reached a common ground of agreement. The neutrality of the inceroceanic routes, and their freedom from the superior and controlling influence of any one government; the principles upon which the Mosquito protectorate may be arranged, with justice alike to the sovereignty of Nicaragua and the Indian tribes; the surrender of the Bay Islands, under certain stipulations for the benefit of trade and the protection of their British occupants; and the definition of the boundaries of British Belize; about all these points there is no apparent disagreement, except as to the conditions which shall be annexed to the Bay Islands' surrender, and as to the limits which shall be fixed to the settlements of Belize. Is it possible that, if approached in a spirit of conciliation and good feeling, these two points of difference are not susceptible of a friendly adjustment? To believe this would be to underestimate the importance of the adjustment, and the intelligent appreciation of this importance which must be entertained by both nations. What the United States want in Central America, next to the happiness of its people, is the security and neutrality of the interoceanic routes which lead through it. This is equally the desire of Great Britain, of France, and of the whole commercial world. If the principles and policy of the Clayton-Bulwer treaty are carried into effect, this object is accomplished. When, therefore, Lord Malmesbury invites new overtures from this government upon the idea that it has rejected the proposal embraced in Sir William Ouseley's mission for an adjustment of the Central American questions by separate treaties with Honduras, Nicaragua, and Guatemala, upon terms substantially according with the general tenor of the American interpretation of the treaty, I have to reply to his lordship that this very adjustment is all that the President has ever desired, and that, instead of having rejected that proposal, he had expressed his cordial acceptance of it, so far as he understood it, and had anticipated from it the most gratifying consequences.

Further, in a dispatch to Mr. Lamar of July 25, 1858, subsequently communicated to Lord Malmesbury by Mr. Dallas on the 29th April, 1859, General Cass says:

These great avenues of intercommunication are vastly interesting to all commercial powers, and all may well join in securing their freedom and use against those dangers to which they are exposed from aggressions or outrages, originating within or without the territories through which they pass.

It is difficult to conceive a more distinct statement of adherence to the general principles of the Clayton-Bulwer arrangement, or a more positive disclaimer of the policy involved in Mr. Blaine's present proposals, than is contained in the passages I have just quoted.

I return, however, to the extracts given in Mr. Blaine's dispatch. Mr. Blaine alludes to an important interview which Lord Napier had with President Buchanan on the 19th October, 1857, in which Lord Napier asked that, pending the negotiation intrusted to Sir W. Gore Ouseley, no proposal to annul the Clayton-Bulwer treaty should be sanctioned or encouraged by the President or members of the United States Government. Lord Napier's account of the President's language is as follows:

The President commenced his observations by referring to the Clayton-Bulwer treaty as a fruitful source of misunderstanding between the contracting parties. Without that treaty the United States and Great Britain might long since have cooperated for the welfare of Central America. That treaty had never been acceptable to the people of the United States, and would not have obtained a vote in the Senate had the least suspicion existed of the sense in which it was to be construed by Great Britain; yet, if it were now the intention of Her Majesty's Government to execute it according to the American interpretation, that was as much as we could insist upon.

And after reporting what passed at the interview with regard to the Bay Islands and Honduras, Lord Napier continued:

I then went on to animadvert upon the danger of some movement in the approaching Congress which would interfere with the contemporary negotiation of Sir William Ouseley, remarking that should the President, in his message, allude to the position of the two countries in reference to Central America, and if, in consequence of his excellency's reflections, a resolution should be proposed for the abrogation of the Clayton-Bulwer treaty, such a step would not only frustrate the purposes of Sir William Ouseley's mission, but would have a calamitous influence on the future relations of

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England and America. It would, therefore, be highly gratifying to me to be enabled to assure your lordship that, pending the negotiation intrusted to Sir William Ouseley, no proposal to annul the treaty would be sanctioned or encouraged by his excellency or by the members of his government.

The President stated, in reply, that it was certainly his intention to give an account in his message of all that had passed between the two governments respecting the Dallas-Clarendon treaty. He appeared to intimate that the effect of such a narrative would be to place the conduct of Great Britain in an unfavorable light, and he added that the passage in which he commented upon these transactions was already prepared; but his excellency went on to affirm, with emphasis, that if the resolutions of Her Majesty's Government were such as I had related, if they really meant to execute the Clayton-Bulwer treaty according to the American interpretation, and would, before the meeting of Congress, make some communication to him in that sense, such as he could use, he would cancel what he had written and insert another passage referring to the mission of Sir William Ouseley, and that "nothing would give him greater pleasure than to add the expression of his sincere and ardent wish for the maintenance of friendly relations between the two countries."

His excellency also distinctly declared that, under the circumstances here described, no attempt against the Clayton-Bulwer treaty in Congress would have any countenance from him whatever. To him it was indifferent whether the concession contemplated by Her Majesty's Government were consigned to a direct engagement between England and the United States, or to treaties between the former and the Central American republics; the latter method might, in some respects, be even more agreeable to him, and he thought it would be more convenient to Her Majesty's Government, who might, with greater facility, accede to the claims of the weaker party.

I pass over some passages given in Mr. Blaine's dispatch which seem to call for no remark, and I would only observe that the proposal for arbitration alluded to in Lord Napier's note to General Cass of February 17, 1858, applied only to the controverted points in the treaty, and not to the whole instrument.

Mr. Blaine refers to a conversation with General Cass, reported by Lord Napier in a dispatch of the 22d March, 1858, in which reference was made to the idea of an abrogation of the treaty. It may be well to give a larger extract of this dispatch, because, although Lord Napier's remarks were stated to be personal and unofficial, they show his view of the form which such an abrogation should take. He says:

I have, accordingly, on two occasions, informed General Cass that if the Government of the United States be still of the same mind, and continue to desire the abrogation of the treaty of 1850, it would be agreeable to Her Majesty's Government that they should insert a proposal to that effect in their reply to my note respecting arbitration, and to that in which I explained the character and motives of the mission intrusted to Her Majesty's commissioner in Central America.

Some conversation ensued regarding the manner in which the dissolution of the treaty should be effected, and the condition by which it might be accompanied, and on these topics I have held the following language, premising that the views expressed were altogether spontaneous and personal, for I had no information of the intentions of Her Majesty's Government beyond the bare fact that they would entertain a proposal to cancel the engagements of 1850 emanating from the United States.

I stated that, in my opinion, the treaty in question could only be repealed by a new treaty in the usual forms, and that it might be desirable that such a treaty should not be restricted to a single article annulling its predecessor. Both for considerations of decency and policy I advocated the insertion of stipulations involving an expression of a common policy in Central America, and the disavowal of any exclusive or monopolizing projects on either side. I said that I thought a treaty might be framed of three articles.

The first should declare the desire of the contracting parties to encourage and protect the organization of transit routes in the interoceanic region, and bind those parties never to negotiate for any rights or privileges of transit with the Central American States of a preferential or exclusive character, to which other nations might not, by negotiation, be equally admitted, establishing thus the principle of an equal enjoyment of those avenues of trade for all the countries of the world.

The second article might recognize the jurisdiction of the transit route by the San Juan River as being vested in the government of Nicaragua. This had been already avowed by the United States in a treaty negotiated with that republic. It had not been definitely affirmed by Great Britain, and might seem to clash with the claims of the King of Mosquitia to territorial possession or authority in those parts. I thought,

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however, that in regard to the views lately expressed by Her Majesty's Government in the course of recent negotiations, in consideration of the necessity of obtaining a suitable treaty with Nicaragua, and for the purpose of placing themselves in harmony with the course pursued by the United States, Her Majesty's Government might, on this head, accede to an article which would practically restrict their protectorate in Mosquitia, and prevent the importation of any interference on their part with the territory traversed by the river, and. therefore, by the transit route.

Finally, I suggested that Article III of the treaty should simply declare the provisions of the treaty of 1850 to be void and of no effect. I added that the question of future territorial acquisition in Central America would thus be thrown open to the United States; that Her Majesty's Government, on the other hand, would retain the colony of Honduras in the proportions which might be given to it by treaty arrangements with Guatemala, and that the Bay Islands would remain attached to the British Crown. Indeed, I affirmed, still as a personal opinion, but of the most positive character, that in case of the dissolution of the Clayton-Bulwer treaty, the Bay Islands would not be relinquished by Her Majesty's Government. I felt bound to make this statement, having observed in some quarters an impression that Her Majesty's Government might be disposed not only to annul the treaty, thus opening a path for the eventual annexation of the isthmus to the Federal Union, but to give up the Bay Islands as well; a notion altogether unfounded in any intimation which has hitherto reached me from the Foreign Office, and which could not be reconciled, in my opinion, to the interests of England.

Lord Napier adds that he was most careful to remark throughout that the opinions he enunciated with reference to the treaty were exclusively his own.

Mr. Blaine gives only a very short extract from Lord Malmesbury's dispatch in reply of the 8th April, 1858. It will be desirable to quote it more at length. Lord Malmesbury says:

Her Majesty's Government, if the initiative is still left to them by the unwillingness of the United States themselves to propose abrogation, desire to retain full liberty as to the manner and form in which any such proposal shall be laid on their behalf before the Cabinet at Washington; but without pronouncing any decided opinion at the present moment, I think it right to point out to your lordship that the effect of such an article as that suggested in your dispatch, as the second, might be to perpetuate an entanglement with the government of the United States, and to place that government in a position to question or control the free action of Her Majesty's Government in everything that relates to Central America. The Clayton-Bulwer treaty has been a source of unceasing embarrassment to this country, and Her Majesty's Government, if they should be so fortunate as to extricate themselves from the difficulties which have resulted from it, will not involve themselves, directly or indirectly, in any similar difficulties for the future.

Her Majesty's Government would have no objection to enter with the United States into a self-denying engagement such as that suggested in your first article, by which both parties should renounce all exclusive advantage in the use of any of the interoceanic routes, and should bind themselves, each to the other, not to interfere with free transit. Such an article would be a suitable substitute for the Clayton-Bulwer treaty, for it would secure, as regards the contracting parties, the avowed object of that treaty—the freedom of interoceanic communication.

But beyond this Her Majesty's Government, as at present advised, are not prepared to contract any engagement as a substitute for the Clayton-Bulwer treaty, and from the abrogation of that compact, if it should take place, they will hold themselves as free to act in regard to Central America in the manner most conducive to the advancement of British interests and the fulfillment of British obligations as if the treaty had never been concluded.

Your lordship was, therefore, perfectly right in using decided language such as that reported in your dispatch respecting the Bay Islands; and whenever the subject of the abrogation of the Clayton-Bulwer treaty is mooted in your presence, you will make it perfectly clear to the Government of the United States that to abrogate the treaty is to return to the *status quo ante* its conclusion in 1850; that Her Majesty's Government have no kind of jealousy respecting American colonization in Central America, which, indeed, it would help to civilize; and that we neither ask nor wish for any exclusive privileges whatever in those regions.

These, then, were the terms upon which Her Majesty's Government were alone prepared, if at all, to consider the abrogation of the Clayton-Bulwer treaty. And such an alternative was deprecated by General Cass in a note to Lord Napier to the 6th April, 1858, in which, while

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declining the proposal of arbitration on the disputed points of the treaty, he alluded to a personal expression of opinion he had given in favor of an unconditional renunciation of the treaty, and called attention to the serious consequences which might result from its dissolution if no provision were made at the same time for adjusting the questions which led to it. He then concluded with the passage quoted by Mr. Blaine, to the effect that "if the President does not hasten to consider now the alternative of repealing the treaty of 1850 it is because he does not wish prematurely to anticipate the failure of Sir William Ouseley's mission, and is disposed to give a new proof to Her Majesty's Government of his sincere desire to preserve the amicable relations which now happily subsist between the two countries."

But subsequent events make it unnecessary to dwell further upon this part of the discussion, for the question was settled by the practical accomplishment of that which the United States Government regarded as the most satisfactory conclusion.

It is here that the extracts and account of the negotiation given by Mr. Blaine come to an end at a point when the most important episode commences. The continuation of the correspondence shows that on the 30th April, 1859, a treaty was concluded between Great Britain and Guatemala for the settlement of the question of the boundary of Belize; that on the 28th November, 1859, another treaty was concluded between this country and Honduras for the transfer of the Bay Islands to that republic, as well as for the settlement of other questions relating to the Mosquito Indians and the claims of British subjects, including the withdrawal of the British protectorate, and that on the 28th January, 1860, a third treaty was concluded between this country and Nicaragua, also with reference to the Mosquito Indians and the claims of British subjects.

Copies of these three treaties were officially communicated to the United States Government, with the expression of a hope on the part of Her Majesty's Government that they would "finally set at rest the questions respecting the interpretation of the Clayton-Bulwer treaty, which had been the subject of so much controversy between this country and the United States."

And in his message to Congress of the 3d December, 1860, President Buchanan says the dangerous questions arising from the Clayton-Bulwer treaty "have been amicably and honorably adjusted. The discordant constructions of the Clayton-Bulwer treaty between the two governments, which at different periods of the discussion bore a threatening aspect, have resulted *in a final settlement entirely satisfactory to this government.*"

I have been forced to give the above extracts at considerable length, and I refrain from adding other passages which would tend to illustrate and confirm them. A perusal of them, however, will, I think, suffice to show—

1. That the differences which arose between the two governments in regard to the treaty, and which occasioned at one time considerable irritation, but which have long since been happily disposed of, did not relate to the general principles to be observed in regard to the means of interoceanic communication across the isthmus, but had their origin in a stipulation which Mr. Blaine still proposes in great part to maintain. He wishes every part of the treaty in which Great Britain and the United States agree to make no acquisition of territory in Central America to remain in full force, while he desires to cancel those portions of the treaty which forbid the United States fortifying the canal and

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holding the political control of it in conjunction with the country in which it is located.

2. That the declarations of the United States Government during the controversy were distinctly at variance with any such proposal as that just stated. They disclaimed any desire to obtain an exclusive or preferential control over the canal. Their sole contention was that Great Britain was bound by the treaty to abandon those positions on the mainland or adjacent islands which in their opinion, were calculated to give her the means of such a control. Nor did they in any way seek to limit the application of the principles laid down in the treaty so as to exclude Colombia nor Mexican territory, as Mr. Blaine now suggests, nor urge that such application would be inconsistent with the convention between the United States and New Grenada of 1846. On the contrary, they were ready to give those principles their full extension.

3. That at a time when the British Government had been induced by the long continuance of the controversy to contemplate the abrogation of the treaty, they were only willing to do so on the condition of reverting to the *status quo ante* its conclusion in 1850; a solution which was at that time possible, though, as the United States Government justly pointed out, it would have been fraught with great danger to the good relations between the two countries, but which is now rendered impossible by the subsequent events.

4. That a better and more conciliatory conclusion, which for twenty years has remained undisputed, was effected by the independent and voluntary action of Great Britain. The points in dispute were practically conceded by this country, and the controversy terminated in a manner which was declared by President Buchanan to be amicable and honorable, resulting in a final settlement entirely satisfactory to the Government of the United States.

You are authorized to read this dispatch to the United States Secretary of State, and to offer him a copy of it if he should desire, in the same manner in which a copy of Mr. Blaine's dispatch was offered to me.

I have, &c.,

GRANVILLE.

The Hon. L. S. S. WEST.

76.—*Mr. Lowell to Mr. Frelinghuysen.*

No. 376.] LEGATION OF THE UNITED STATES,
London, June 1, 1882. (Received June 13.)

SIR: I have the honor to acknowledge the reception of your instruction No. 368, of the 8th of May last, stating the position of the Government of the United States in relation to questions growing out of the (so-called) Clayton-Bulwer treaty. It arrived on the 27th ultimo, when the members of the government were leaving town for the Whitsuntide holidays. I have had no opportunity of seeing Lord Granville until yesterday, when I had an interview with him, by appointment, at the foreign office. I read the dispatch to him and left a copy of it with him, at his request, agreeably to your directions. I have already informed you of this by cable.

I have, &c.,

J. R. LOWELL.

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56TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 237.

CORRESPONDENCE

IN RELATION TO

AN INTEROCEANIC CANAL BETWEEN THE ATLANTIC AND PACIFIC OCEANS, THE CLAYTON-BULWER TREATY AND THE MONROE DOCTRINE, AND THE TREATY BETWEEN THE UNITED STATES AND NEW GRANADA OF DECEMBER 12, 1846,

COMPRISING

A REPRINT OF SENATE EX. DOCS. NO. 112, 46TH CONGRESS, 2D SESSION; NO. 194, 47TH CONGRESS, 1ST SESSION; AND NO. 26, 48TH CONGRESS, 1ST SESSION; AND CORRESPONDENCE NOT HERETOFORE COMMUNICATED TO CONGRESS.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1900.

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MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING,

IN RESPONSE TO A RESOLUTION OF THE SENATE OF JANUARY 23, 1900, A REPORT FROM THE SECRETARY OF STATE WITH ACCOMPANYING PAPERS, COPIES OF CORRESPONDENCE WITH THE REPUBLIC OF COLOMBIA, IN RELATION TO THE PANAMA CANAL AND TO THE TREATY BETWEEN THIS GOVERNMENT AND NEW GRANADA, CONCLUDED DECEMBER 12, 1846.

MARCH 21, 1900.—Read, referred to the Committee on Foreign Relations, and ordered to be printed.

To the Senate:

In response to the resolution of the Senate of January 23, 1900, requesting the President "if, in his opinion, it is not incompatible with the public interest, to furnish the Senate with copies of the correspondence with the Republic of Colombia, in relation to the Panama Canal and to the treaty between this Government and New Granada, concluded December twelfth, eighteen hundred and forty-six, not heretofore communicated," I transmit herewith a report from the Secretary of State with accompanying papers.

WILLIAM MCKINLEY.

EXECUTIVE MANSION, *March 21, 1900.*

To the PRESIDENT:

The undersigned, the Secretary of State, to whom the President referred for consideration and report a resolution adopted in the Senate of the United States on the 23d of January last, reading as follows:

Resolved, That the President be, and he is hereby, requested, if in his opinion it is not incompatible with the public interest, to furnish the Senate with copies of the correspondence with the Republic of Colombia, in relation to the Panama Canal, and to the treaty between this Government and New Granada, concluded December twelfth, eighteen hundred and forty-six, not heretofore communicated;

Has the honor to submit to the President the following report and collected copies of correspondence, which appear to meet the intent

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of the resolution, to the end that, in the President's discretion, they may be communicated to the Senate in response to its call.

The correspondence which has been heretofore communicated to the Senate, and to which the resolution is believed to refer specifically, is fully contained in Senate Executive Documents No. 112, Forty-sixth Congress, second session; No. 194, Forty-seventh Congress, first session; No. 26, Forty-eighth Congress, first session, and Senate Miscellaneous Document No. 12, Forty-eighth Congress, second session. The first three of these documents are conveniently reprinted in a volume entitled "Correspondence in relation to the proposed interoceanic canal between the Atlantic and Pacific oceans, and the Clayton-Bulwer Treaty and the Monroe Doctrine," which compilation, besides containing much correspondence with other governments in relation to the subjects mentioned in its title, is believed to reproduce substantially the correspondence had with the Republic of Colombia as defined in the resolution. A copy of that reprint is annexed hereto for convenient reference. The Senate Miscellaneous Document No. 12, Forty-eighth Congress, second session, which gives extracts from the few dispatches received from Mr. George Maney, then minister resident in Colombia, bearing on the general subjects of the canal and the treaty of 1846, has not been so reprinted. A copy thereof is annexed.

Since the date of these two Senate documents the annual volumes giving a selection of the diplomatic correspondence of this Government, under the title of "Foreign Relations of the United States," have contained nearly all the correspondence had with the Government of Colombia and with the United States minister at Bogota in relation to the transisthmian project and to the obligations and stipulations of the treaty of 1846 between the United States and Colombia. Indeed, so full has been the publication in this regard that a careful search through the archives since 1878 shows only a few unpublished papers which might even remotely be deemed to relate to the subjects of the present Senate resolution. All the correspondence printed in those volumes and not contained in or appearing subsequently to the two Senate executive documents above mentioned have been collected as an accompaniment to this report, adding thereto all such pertinent documents as have not heretofore been printed by authority of either House of the Congress. This collection is herewith submitted as a full and substantial response to the request of the resolution.

Respectfully submitted.

JOHN HAY.

DEPARTMENT OF STATE,
Washington, March 19, 1900.

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LIST OF PAPERS.

Correspondence in relation to the proposed interoceanic canal between the Atlantic and Pacific oceans, the Clayton-Bulwer Treaty and the Monroe Doctrine, being a reprint of Senate Ex. Docs. No. 112, Forty-sixth Congress, second session; No. 194, Forty-seventh Congress, first session, and No. 26, Forty-eighth Congress, first session.

Senate Mis. Doc. No. 12, Forty-eighth Congress, second session.

Mr. Dichman to Mr. Evarts, August 14, 1878.

Mr. Dichman to Mr. Evarts, No. 17, October 30, 1878.

Mr. Dichman to Mr. Evarts, No. 48, February 15, 1879.

Mr. Dichman to Mr. Evarts, No. 58, March 17, 1879.

Mr. Dichman to Mr. Evarts, No. 112, July 19, 1879.

Mr. Dichman to Mr. Evarts, No. 118, August 1, 1879.

Mr. Dichman to Mr. Evarts, No. 151, October 17, 1879.

Mr. Dichman to Mr. Evarts, No. 156, November 9, 1879.

Mr. Evarts to Mr. Dichman, No. 107, April 19, 1880.

Mr. Evarts to Mr. Trescot, February 15, 1881.

Mr. Evarts to General Santo Domingo, February 15, 1881.

Mr. Trescot to Mr. Evarts, February 18, 1881.

General Santo Domingo to Mr. Evarts, February 18, 1881.

Mr. Becerra to Mr. Blaine, May 7, 1881.

Project of protocol submitted by Colombian minister, General Santo Domingo-Vila.

Counter-project from the Department.

Memorandum of the Department of State on the Colombian project and counter-project.

Translation of papers published by authority of the Colombian Government in Diario Oficial, Bogotá, May 27, 1881.

Mr. Blaine to Mr. Maney, No. 3, July 25, 1881.

Mr. Scruggs to Mr. Frelinghuysen, No. 80, April 9, 1883.

Mr. Becerra to Mr. Bayard, April 2, 1885.

Mr. Becerra to Mr. Bayard, April 4, 1885.

Mr. Becerra to Mr. Bayard, April 4, 1885.

Mr. Bayard to Mr. Becerra, April 6, 1885.

Mr. Scruggs to Mr. Bayard, No. 201, April 16, 1885.

Mr. Bayard to Mr. Jacob, No. 2, November 3, 1885.

Mr. Bayard to Mr. Becerra, November 14, 1885.

Mr. Bayard to Mr. Becerra, January 23, 1886.

Mr. Becerra to Mr. Bayard, January 27, 1886.

Mr. Porter to Mr. Becerra, February 1, 1886.

Mr. Becerra to Mr. Bayard, May 4, 1886.

Mr. Bayard to Mr. Becerra, May 26, 1886.

Mr. Bayard to Mr. Maury, February 25, 1887, No. 12.

Mr. Bayard to Mr. Maury, No. 44, November 14, 1887.

Mr. Maury to Mr. Bayard, No. 67, December 19, 1887.

Mr. Maury to Mr. Bayard, No. 70, December 25, 1887.

Mr. Maury to Mr. Bayard, No. 73, December 29, 1887.

Mr. Bayard to Mr. Maury, No. 56, February 2, 1888.

Mr. Foster to Mr. Coughlin, No. 323, December 22, 1892.

Mr. Foster to Mr. Abbott, No. 333, February 8, 1893.

Mr. Abbott to Mr. Foster, No. 459, February 22, 1893.

Mr. Abbott to Mr. Gresham, No. 493, April 15, 1893.

Mr. Rengifo to Mr. Sherman, May 15, 1897.

Mr. Sherman to Mr. Rengifo, May 21, 1897.

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REPRINT OF SENATE EX. DOCS. NO. 112, 46TH CONG., 2D SESS.; NO. 194, 47TH CONG., 1ST SESS.; AND NO. 26, 48TH CONG., 1ST SESS.

INTEROCEANIC CANAL.

[Senate Ex. Doc. No. 112, Forty-sixth Congress, second session.]

Message from the President of the United States, in response to Senate resolution of February 11, 1880, covering report of Secretary of State, with accompanying documents, in relation to the proposed interoceanic canal between the Atlantic and Pacific oceans.

MARCH 9, 1880.—Referred to the Committee on Foreign Relations and ordered to be printed.

To the Senate:

I transmit herewith the report of the Secretary of State, and the accompanying papers, in response to the resolution adopted by the Senate on the 11th of February last, requesting "copies of all correspondence between this Government and any foreign government since February, 1869, respecting a ship canal across the Isthmus between North America and South America, together with copies of any projét of treaties respecting the same which the Department of State may have proposed or submitted since that date to any foreign power or its diplomatic representative."

In further compliance with the resolution of the Senate, I deem it proper to state briefly my opinion as to the policy of the United States with respect to the construction of an interoceanic canal, by any route, across the American Isthmus.

The policy of this country is a canal under American control. The United States can not consent to the surrender of this control to any European power, or to any combination of European powers. If existing treaties between the United States and other nations, or if the rights of sovereignty or property of other nations stand in the way of this policy—a contingency which is not apprehended—suitable steps should be taken by just and liberal negotiations to promote and establish the American policy on this subject, consistently with the rights of the nations to be affected by it.

The capital invested by corporations or citizens of other countries in such an enterprise must, in a great degree, look for protection to one or more of the great powers of the world. No European power can intervene for such protection without adopting measures on this continent which the United States would deem wholly inadmissible. If the protection of the United States is relied upon, the United States must exercise such control as will enable this country to protect its national

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interests and maintain the rights of those whose private capital is embarked in the work.

An interoceanic canal across the American Isthmus will essentially change the geographical relations between the Atlantic and Pacific coasts of the United States, and between the United States and the rest of the world. It will be the great ocean thoroughfare between our Atlantic and our Pacific shores, and virtually a part of the coast line of the United States. Our merely commercial interest in it is greater than that of all other countries, while its relations to our power and prosperity as a nation, to our means of defense, our unity, peace, and safety are matters of paramount concern to the people of the United States. No other great power would, under similar circumstances, fail to assert a rightful control over a work so closely and vitally affecting its interest and welfare.

Without urging further the grounds of my opinion, I repeat, in conclusion, that it is the right and the duty of the United States to assert and maintain such a supervision and authority over any interoceanic canal across the isthmus that connects North and South America as will protect our national interests. This I am quite sure will be found not only compatible with, but promotive of, the widest and most permanent advantage to commerce and civilization.

RUTHERFORD B. HAYES.

EXECUTIVE MANSION, *March 8, 1880.*

DEPARTMENT OF STATE,
Washington, March 8, 1880.

To the President:

The Secretary of State, to whom was referred the resolution of the Senate of the 11th ultimo, requesting the President, if not in his opinion incompatible with the public business, "to transmit to the Senate copies of all correspondence between this Government and any foreign Government since February, 1869, respecting a ship canal across the isthmus between North America and South America, together with copies of any projet of treaties respecting the same which the Department of State may have proposed or submitted since that date to any foreign power or its diplomatic representative," and also the resolution of the House of Representatives of the 10th ultimo, on the same subject, has the honor to present to the President a connected view of certain correspondence and information called for by said resolutions for transmission to Congress, in anticipation of any more full and complete collection of the correspondence within the scope of the resolutions that a more careful examination of the files of the Department might enable him to supply.

The natural interest of the United States in any connection through the American Isthmus has not only always been emphatically expressed by the Government, but it has been fully and distinctly recognized by other governments from the earliest period of our national existence.

As far back as 1797, when the condition of public affairs in Europe afforded the first indications of those changes in Spanish colonial possessions on this continent which were afterward so completely realized by the establishment of the independence of Mexico and the South and Central American provinces, a plan was submitted to and considered

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by the Government of Great Britain by which the possession of Louisiana and Florida was to be given to the United States, and it was further proposed that "The passage of the Isthmus of Panama, as well as that of Lake Nicaragua, will be equally guaranteed for all merchandise belonging to citizens of the United States of America, and the exportation of all products of South America will be equally encouraged on their commercial vessels—the North Americans becoming, as they ought to be, for us what the Hollanders have for a long time been for the Northern Powers—that is to say, carriers."

From that period, as the independence of these republics became established, and as the commercial resources and territory of the United States became extended, the relations of this Government with the States of Central and South America grew closer, and a more direct interest was taken in the possible completion of an interoceanic canal connection. The subject was one to which the attention of the Government was always directed, and while for very many years there was no practical discussion of the project, there was at several periods diplomatic communication indicating the general views both of the United States and the governments of those States through whose territories the projected canals would pass.

It is unnecessary to do more than refer to this interchange of opinion. The first diplomatic transaction by which the Government of the United States acquired treaty rights and assumed treaty obligations in reference to an Isthmus canal was the treaty between the United States and New Granada, signed at Bogota 12th December, 1846, and ratified by both Governments in 1848.

By the thirty-fifth article of this treaty it was stipulated:

ARTICLE XXXV.

The United States of America and the Republic of New Granada, desiring to make as durable as possible the relations which are to be established between the two parties by virtue of this treaty, have declared solemnly and do agree to the following points:

1st. For the better understanding of the preceding articles, it is and has been stipulated between the high contracting parties that the citizens, vessels, and merchandise of the United States shall enjoy in the ports of New Granada, including those of the part of the Granadian territory generally denominated *Isthmus of Panama*, from its southernmost extremity until the boundary of Costa Rica, all the exemptions, privileges, and immunities concerning commerce and navigation which are now or may hereafter be enjoyed by Granadian citizens, their vessels, and merchandise; and that this equality of favors shall be made to extend to the passengers, correspondence, and merchandise of the United States in their transit across the said territory from one sea to the other. The Government of New Granada guarantees to the Government of the United States that the right of way or transit across the *Isthmus of Panama*, upon any modes of communication that now exist or that may be hereafter constructed, shall be open and free to the Government and citizens of the United States, and for the transportation of any articles of produce, manufactures, or merchandise, of lawful commerce, belonging to the citizens of the United States; that no other tolls or charges shall be levied or collected upon the citizens of the United States, or their said merchandise thus passing over any road or canal that may be made by the Government of New Granada, or by the authority of the same, than is under like circumstances levied upon and collected from the Granadian citizens; that any lawful produce, manufactures, or merchandise belonging to citizens of the United States thus passing from one sea to the other, in either direction, for the purpose of exportation to any other foreign country, shall not be liable to any import duties whatever; or, having paid such duties, they shall be entitled to drawback upon their exportation; nor shall the citizens of the United States be liable to any duties, tolls, or charges of any kind to which native citizens are not subjected for thus passing the said Isthmus. And, in order to secure to themselves the tranquil and constant enjoyment of these advantages, and as an especial compensation for the

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said advantages, and for the favors they have acquired by the 4th, 5th, and 6th articles of this treaty, the United States guarantee positively and efficaciously to New Granada, by the present stipulation, the perfect neutrality of the before-mentioned Isthmus, with the view that the free transit from the one to the other sea may not be interrupted or embarrassed, in any future time while this treaty exists; and, in consequence, the United States also guarantee, in the same manner, the rights of sovereignty and property which New Granada has and possesses over the said territory.

2d. The present treaty shall remain in full force and vigor for the term of twenty years from the day of the exchange of the ratifications; and from the same day the treaty that was concluded between the United States and Colombia on the 3d of October, 1824, shall cease to have effect, notwithstanding what was disposed in the first point of its 31st article.

3d. Notwithstanding the foregoing, if neither party notifies to the other its intention of reforming any of or all the articles of this treaty twelve months before the expiration of the twenty years stipulated above, the said treaty shall continue binding on both parties beyond the said twenty years, until twelve months from the time that one of the parties notifies its intention of proceeding to a reform.

4th. If any one or more of the citizens of either party shall infringe any of the articles of this treaty, such citizens shall be held personally responsible for the same, and the harmony and good correspondence between the two nations shall not be interrupted thereby; each party engaging in no way to protect the offender or sanction such violation.

5th. If unfortunately any of the articles contained in this treaty should be violated or infringed in any way whatever, it is expressly stipulated that neither of the two contracting parties shall ordain or authorize any acts of reprisal, nor shall declare war against the other on complaints of injuries or damages, until the said party considering itself offended shall have laid before the other a statement of such injuries or damages, verified by competent proofs, demanding justice and satisfaction, and the same shall have been denied, in violation of the laws and of international right.

6th. Any special or remarkable advantages that one or the other power may enjoy from the foregoing stipulation are, and ought to be, always understood in virtue and as in compensation of the obligations they have just contracted, and which have been specified in the first number of this article.

This treaty was by its own stipulation to remain in full force and effect for twenty years, and then if neither party gave notice of intended termination it was to continue in force, terminable by either party by twelve months' notice. No such notice on either side has ever been given, and no other treaty with New Granada on this subject has ever been executed. This treaty is consequently of force, and the canal communication, should it be accomplished in accordance therewith, and with the concurrence of the United States that it is in such accordance, which under this treaty must be deemed essential, would be to-day under the protection and guarantee of the United States, and both its projectors and the Government of New Granada would be authorized in certain contingencies to call upon the Government of the United States for the fulfillment of this obligation.

Indeed it is proper to add that on several occasions the Government of the United States has been called on to consider and enforce its guarantee.

In 1862 Mr. Seward addressed Mr. Adams at London and Mr. Dayton at Paris as follows:

Mr. Seward to Mr. Adams.

No. 296.] DEPARTMENT OF STATE,
Washington, July 11, 1862.

SIR: The treaty between the United States and the Republic of New Granada, signed on the 12th day of December, 1846, contains a stipulation which it will be seen was made not for any special or peculiar interest or advantage of the United States, but for the benefit and advantage of all nations, and which is in the following words, contained in the 35th article of said treaty:

"And in order to secure to themselves the tranquil and constant enjoyment of these advantages, and as an especial compensation for the said advantages, and for the favors

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they have acquired by the 4th, 5th, and 6th articles of this treaty, the United States guarantee positively and efficaciously to New Granada, by the present stipulation, the perfect neutrality of the before-mentioned Isthmus, with the view that the free transit from the one to the other sea may not be interrupted or embarrassed in any future time while this treaty exists; and, in consequence, the United States also guaranty, in the same manner, the rights of sovereignty and property which New Granada has and possesses over the said territory."

On the 26th of June last Mr. P. A. Herran, minister plenipotentiary of the Granadian Confederation near the Government of the United States, transmitted to this Department a note, of which a translation is hereto annexed, marked A.

In this note Mr. Herran gave information that Mosquera, a revolutionary chief who is engaged in subverting the Granadian Confederation, had sent an armed force to occupy the Isthmus of Panama, which proceeding was opposed by an unavailing protest of the governor of Panama, and Mr. Herran therefore invoked the interposition of this Government in accordance with the treaty obligations above set forth.

Simultaneously with the reception of this note of Mr. Herran's, substantially the same information which it gave was received from our consul residing at Panama, and the President therefore instructed our naval commander at that port to take care to protect and guarantee at all hazards, and at whatever cost, the safety of the railroad transit across the Isthmus of Panama. Mr. Herran now insists that, owing to the character of the population on the Isthmus and the revolutionary condition of that region, the security of the transit across the Ithsmus cannot be adequately insured by the presence and activity of a mere naval force, and that the Granadian Confederation is entitled, therefore, to the special aid of a land force to be sent from the United States, and suggests that it should be made to consist of three hundred cavalry.

This Government has no interest in the matter different from that of other maritime powers. It is willing to interpose its aid in execution of its treaty and for the benefit of all nations. But if it should do so it would incur some hazard of becoming involved in the revolutionary strife which is going on in that country. It would also incur danger of misapprehension of its objects by other maritime powers if it should act without previous consultation with them. The revolutionary disturbances existing in that quarter are doubtlessly as well known and understood by the Governments of Great Britain and France as they are by this Government, and they are probably also well informed of the proceedings of Mosquera which has moved Mr. Herran's application to the President. He desires an understanding with these two Governments upon the subject, and you are therefore instructed to submit the matter to Earl Russell, as Mr. Dayton will likewise be instructed to confer with Mr. Thouvenel.

The points to be remembered are:

First. Whether any proceeding in the matter shall be adopted by the United States with the assent and acquiescence of the British and French Governments.

Secondly. What should be the force and extent of the aid to be rendered to the Granadian Confederation.

Thirdly. Whether these Governments will unite with the United States in guaranteeing the safety of the transit and the authority of the Granadian Confederation, or either of these objects, and the form and manner in which the parties shall carry out such agreement.

I hardly need say that this Government is not less anxious to avoid any such independent or hasty action in the matter as would seem to indicate a desire for exclusive or especial advantages in New Granada than the British Government can be that we shall abstain from such a course.

I am, &c., &c,,

WILLIAM H. SEWARD.

The same, *mutatis mutandis*, to Mr. Dayton at Paris, No. 180.

Mr. Adams responded as follows:

No. 201.] LEGATION OF THE UNITED STATES,
London, August 1, 1862.

SIR: Yesterday I had a conference with Lord Russell at the foreign office, in the course of which I went over the various subjects whereupon I had received instructions in your late dispatches. I propose to review them in the order in which they came up.

* * * * * * *

Lastly I read to his lordship the dispatch, No. 296, relating to the claim of Mr. Herran for the fulfillment of the guarantee to New Granada to protect the transit on the Isthmus of Panama. I observed that it must be obvious that the Government of the

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United States could not desire just at this time to enlarge the field of operation for its forces; hence that its performance of this obligation would necessarily depend only upon a full conviction of its imperative character. On that point it would be glad to consult with other powers most interested in the transit which it was the object to preserve. His lordship seemed already well informed of the facts in the case. He said that he did not yet perceive the contingency to have occurred which called for interposition. It was true that General Mosquera was in occupation of the territory in resistance to the Granadian Government. Such things were happening all the time in South America. But there had been no attempt, so far as he knew, to obstruct the free transit across the isthmus, nor did he understand that any disposition had been shown to do so. Until there should be some manifestation of the sort, any demonstration might have the appearance of interposing to effect a different purpose. His lordship added that on the happening of an actual derangement of the communication the British Government would readily cooperate with the United States in the measures that might be thought necessary to make good the privileges secured by the guarantee.

I believe this closed all the topics to which it had been made my duty especially to call his lordship's attention. I then took my leave of him, probably for the season, as he spoke of his departure from town next week and mentioned that the undersecretary would in his absence attend to the transaction of any business that I might have occasion to propose.

* * * * * * *

I have, &c.,

CHARLES FRANCIS ADAMS.

Mr. Dayton responded as follows:

No. 185.] PARIS, *August 29, 1862.*

SIR: I have to-day called the attention of Mr. Thouvenel to your dispatch, No. 180, in reference to the application of New Granada for assistance in the preservation of the neutrality of the isthmus and the sovereignty of that country. Somewhat to my surprise, I found that your dispatch had not been submitted by the minister *ad interim* to Mr. Thouvenel on his return, and that, in point of fact, he had not yet seen it. He informed me, however, that the same question substantially had been presented to him through Mr. Mercier, and that a written reply had been forwarded some days since, which doubtless has been or will be promptly communicated to you. Mr. Thouvenel, however, seemed to think your communication was rather in the nature of a conference as to what you should under the circumstances do than as indicating any fixed determination to act in the premises. He says that in the view he took he did not see that it was necessary that you should under the treaty do anything at all; that the neutrality of the isthmus was not in question and the railroad had not been disturbed. He said that whether one party or the other had control of the Government of New Granada did not affect the question; that France had not recognized Mosquera or his government, because there was an opposition in arms against him, or, in other words, there was a civil war between opposing parties; that if the railroad were about to be interrupted or destroyed he would not think it improper for the United States to interfere, but if matters remained now as they were a month since, when his advices were received, he thought it uncalled for at this time by any treaty stipulation. He referred, too, to the somewhat anomalous position of Mr. Herran, who made the call for interference, and who, he seemed to think, did not represent the government actually in power. He further said that a few days since the British ambassador had applied to them to know what view the French Government took of this matter, and he had sent him by way of reply a copy of his late note to Mr. Mercier; that they had not as yet heard what action the British Government had taken upon the question.

The above is the substance of our conversation. I should have asked from Mr. Thouvenel (as I had from Mr. Rouher) a written reply but for the fact stated that he had already written to Mr. Mercier. If you have occasion to communicate to the Government of New Granada the view taken by France, a copy of this note, if asked for, will doubtless be supplied by Mr. Mercier.

I am, &c.,

WM. L. DAYTON.

In 1864 the Government of the United States was called upon to interfere, if the necessity should arise, to prevent the importation of troops and munitions of war by Spain across the Isthmus of Panama for the purpose of carrying on war against Peru. And although for-

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tunately the necessity did not arise, the Attorney-General, to whom the case was referred for an opinion, held that under the guarantee of the treaty such interference would be obligatory. (Opinions Attorney-General, Vol. XI, p. 69.)

In 1865 the question arose as to the obligation of the United States to comply with the requisition of the President of the United States of Colombia (New Granada) for a force to protect the Isthmus of Panama from invasion by a body of insurgents of that country. In this case the Government of the United States held, under the opinion of the Attorney-General, and so communicated to its representative at Bogota, that the guarantee of New Granada in the sovereignty and property over the territory was only as against other and foreign governments, and did not authorize the United States to take sides with one or the other party in the intestine troubles of that nation. (Opinions Attorney-General, Vol. XI, pp. 392, 393.)

Four years after the signature of this treaty and two years after its ratification the United States and Great Britain, April 19, 1850, executed the treaty which is generally known as the Clayton-Bulwer treaty.

The necessity for this treaty having arisen from the complication of the interests of Great Britain and the United States in Central America, its special provisions were confined to the adjustment of such questions in that region as seemed to threaten the amicable relations of these two powers, and provided that neither Great Britain nor the United States would ever obtain or maintain for itself any exclusive control over a ship canal through the territory of Central America, erect or maintain any fortification commanding the same or in the vicinity thereof, occupy, fortify, colonize, or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America, nor make use of any alliance, connection, or influence with any of these States to obtain any unequal advantages in regard to commerce or navigation through such canal.

These stipulations, it will be observed, were confined to Central America, and were finally carried out by negotiations with the States of Central America themselves. These negotiations were sometimes under the joint recommendation of the United States and Great Britain, sometimes separate with Great Britain, but, as I shall have occasion to show hereafter in some detail, were known in their progress to the United States, and, with some differences of opinion, frankly and amicably discussed between the two Governments, were considered as generally satisfactory.

But besides these stipulations, confined to Central America, the 8th article of the Clayton-Bulwer treaty provided:

> The Governments of the United States and Great Britain having not only desired in entering into this convention to accomplish a particular object, but also to establish a general principle, they thereby agree to extend their protection, by treaty stipulation, to any other practicable communications, whether by canal or railway, across the isthmus which connects North and South America, and especially to the interoceanic communications which are now proposed to be established by way of Tehuantepec and Panama.

It is evident from the language of this article that the special stipulations in reference to Central America were not thus made obligatory in relation to Mexico and New Granada, as indeed they could scarcely have been without the diplomatic intervention of those powers themselves.

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But the United States undertook by this provision to extend to Great Britain such participation in the general benefits of any interoceanic connection which might be opened in these countries as was afforded by the principles of the Clayton-Bulwer treaty; and these were to be secured by "treaty stipulations," to be made at the proper time and under such conditions as might appear wisest and best when that time should come. This declaration, therefore, of a general principle to be put in practice, could not and did not modify either the rights or obligations which the United States had acquired or assumed by the treaty with New Granada of 1846, and which still exist in all their binding effect. The concession, the building, and the administration of the Panama Railroad are a sufficient illustration of the correctness of this view.

In April, 1856, occurred the riot at Panama, by which the lives of many American citizens were sacrificed and a vast amount of valuable property was destroyed by a mob, which, if not instigated, were certainly not restrained, by the New Granadian authorities.

This atrocious outrage excited universal indignation, and the Government of the United States was forced to consider whether it would not be obliged to assume a position of more direct and vigorous authority on the isthmus.

In December, 1856, Mr. Marcy, then Secretary of State, sent two special ministers to Bogota with instructions to submit to the consideration of the New Granadian Government the project of a treaty, with the draft of which they were furnished. Those instructions and the project of treaty are herewith submitted to you. (Inclosure No. 1.)

The necessity for this new arrangement, Mr. Marcy explained, sprung from the utter inability or unwillingness of the New Granadian Government to afford the necessary protection to the transit of the isthmus, and the consequent imposition upon the United States of its obligations of guarantee. He proposed the creation of a belt of territory twenty miles broad, running from the Atlantic to the Pacific on lines equidistant from the line of the Panama road. The sovereignty of New Granada was to be formally admitted, but the government of the territory was to be placed in the hands of two municipalities, one at the Atlantic, the other at the Pacific terminus of the Panama Railroad. The authorities of these municipalities were to be selected by the inhabitants of the territory and charged with the police protection of persons and property. He further proposed that the United States should acquire either the possession or control of certain islands in the harbors at each terminus, where they could make naval stations, keep supplies, and be in condition to enforce effectively the guarantee of the isthmus. He was careful to disclaim all intention of seeking any commercial advantage over other nations, expressed his willingness to admit them to a participation in the benefits of the treaty, and declared his conviction that the terms of the projected treaty did not conflict with the general and generous principles which the United States had joined Great Britain in declaring.

This treaty was unacceptable to the New Granadian Government.

In 1868 another attempt was made by Mr. Seward to negotiate a treaty which should more precisely define and regulate the relations between the United States and New Granada. You will find herewith (inclosure No. 2) his instructions covering a draft of projected treaty, and he was so anxious to conclude some satisfactory arrangement that

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Mr. Caleb Cushing was sent as special agent to join the minister resident at Bogota and endeavor to procure its adoption. You will find herewith (inclosure No. 3) the treaty which was signed, and which appears to be in conformity with his instructions, but for reasons, of which I am ignorant, it was not ratified by the Senate.

In 1870 another effort was made through Hurlbut to reach the same desirable end, and you will find herewith the treaty which he negotiated and the history of its negotiation (inclosure No. 4). The treaty was acceptable to the United States, but was so extensively and so seriously modified by the Congress of New Granada, to whom it was in due course submitted for ratification, that it could not be accepted by this Government. These amendments are included in inclosure No. 4.

This was the last effort on the part of the United States to negotiate with New Granada on the subject of an interoceanic canal. Congress abolished the mission to that power in 1876, and diplomatic relations were not renewed until the restoration of the mission and the appointment of the present minister in the summer of 1878.

During all this time there have been various concessions by the Colombian Government to parties professing the desire and ability to execute a canal. I do not deem it necessary to call them specially to your attention. They have the same general character, and do not seem to have ever had any real vitality. But I think it proper to send herewith (inclosure No. 5) the last concession, namely, that to Lieutenant Wyse, made March 28, 1878, and with the consent of the Colombian Government transferred to Mr. de Lesseps, a distinguished citizen of France, and universally known as the projector and founder of the Suez Canal.

No treaty relations in reference to an interoceanic canal through the territory of Nicaragua were established by the Government of the United States prior to the execution of the Clayton-Bulwer treaty.

The attention of this Government seems for a long period to have been given chiefly to such connection by way of the Isthmus of Panama. But as the engineering difficulties of that plan attracted its consideration, and the acquisition of territory on the Pacific coast gave more and more practical interest to the completion of some such connection, the importance of the route through Nicaragua seemed to impose upon the Government the necessity of some direct arrangement. The great difficulty in the way was, that, owing to circumstances which are too well known to need recapitulation, the Government of Great Britain had assumed a protectorate over that part of the coasts of Nicaragua and Costa Rica in which lay the Atlantic terminus of any possible connection through those countries, and have given practical effect to its claim of protectorate by the occupation of the port of St. Juan.

Mr. Clayton opened negotiations with the British Government for the purpose of adjusting these differences. The object of the negotiations thus initiated can not be better set forth than in the language of Mr. Rives, who, under the instructions of Mr. Clayton, submitted the views of the Government of the United States to Lord Palmerston.

Mr. Rives to Mr. Clayton.

No. 3.] LONDON, *September 25, 1849.*

SIR: Yesterday I called upon Lord Palmerston, at his house in Carlton Gardens, for the purpose of holding the interview with him which had been previously arranged. He gave me a very cordial reception, and took occasion to say that he

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had come up to London from the residence of Viscount Melbourne in the country, where he had been passing some days, solely for the sake of seeing and conversing with me. After some conversation of a general nature, I stated to him that there being a sort of *interregnum* at present in the usual diplomatic relations of the two countries, owing to the departure of Mr. Bancroft and the postponement for a few weeks of Mr. Lawrence's arrival, you had instructed me, while on my way to Paris, to call upon his lordship and converse with him on a matter which was more than ordinarily urgent and critical; that it was quite unnecessary, I persuaded myself, to assure his lordship that the President was anxious to preserve the most cordial good understanding with her Britannic Majesty's Government; that in proportion as that desire was sincerely felt it was seen with no little concern that there was one question which, unless great prudence and caution were observed on both sides, might involve the two Governments unwittingly in collision; that shortly before I left the United States a letter from the British consul at New York had been published, asserting in very positive and unqualified terms an exclusive claim for the Mosquito Indians to the ownership and sovereign jurisdiction of the mouth and lower part of the river San Juan de Nicaragua; that the United States had no disposition to intermeddle in any pragmatical spirit, or with views in the slightest degree unfriendly to Great Britain, with that question, but they were necessarily parties to it in their own right; that citizens of the United States had entered into a contract with the State of Nicaragua to open, on certain conditions, a communication between the Atlantic and Pacific oceans by the river San Juan and the Nicaragua Lake; that the Government of the United States, after the most careful investigation of the subject, had come undoubtedly to the conclusion that upon both legal and historical grounds the State of Nicaragua was the true territorial sovereign of the river San Juan as well as of the Nicaragua Lake, and that it was therefore bound to give its countenance and support, by all proper and reasonable means, to rights lawfully derived by their citizens under a grant from that sovereign; that the United States, moreover, as one of the principal commercial powers of the world, and the one nearest to the scene of the proposed communication, and holding, besides, a large domain on the western coast of America, had a special and deep national interest in the free and unobstructed use, in common with other powers, of any channel of intercourse which might be opened from the one sea to the other, and that, moved by a proper regard for that interest, it had probably already concluded, or would soon do so, a treaty with Nicaragua for securing a transit for its commerce and public stores by the route in question, on terms open alike to all other nations. I then proceeded to observe to Lord Palmerston that the Government of the United States was particularly desirous that there should be no misconception of its objects and motives in this matter by Her Britannic Majesty's Government, and that it was of the highest importance that both Governments should be made acquainted frankly with the views and intentions of each other; that it had sometimes happened in military operations that detachments of the same army had gotten engaged with each other, *in the dark*, in bloody strife, and so in civil and political affairs, nations, as well as individuals, in ignorance of each other's real views, and under the influence of a natural but unfounded distrust, were often committed in serious opposition to each other, when a frank and unreserved communication, in the first instance, of their respective objects would have brought them to cooperate heartily in the pursuit of a common end; that the United States sought no exclusive privilege or preferential right of any kind in regard to the proposed communication, and their sincere wish, if it should be found practicable, was to see it dedicated to the common use of all nations on the most liberal terms, and a footing of perfect equality for all, securing it beforehand, by proper stipulations, against unreasonable and oppressive exactions for the use of it, either from the States through whose territories it should pass or the individuals or companies who might be authorized to construct it; that the United States would not, if they could, obtain any exclusive right or privilege in a great highway which naturally belonged to all mankind, for they well knew that the possession of any such privilege would expose them to inevitable jealousies and probable controversies, which would make it infinitely more costly than advantageous; that while they aimed at no exclusive privilege for themselves, they could never consent to see so important a communication fall under the exclusive control of any other great commercial power; that we were far from imputing to Her Britannic Majesty's Government any views of that kind, but Mosquito possession at the mouth of the San Juan could be considered in no other light than British possession, and his lordship would readily comprehend that such a state of things, so long as it was continued, must necessarily give rise to dissatisfaction and distrust on the part of other commercial powers. Would it not, then, be wise, I said to Lord Palmerston, that Great Britain and the United States should come to a frank and manly understanding with each other and unite their

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influence for the accomplishment of an object of the highest importance to both of them as well as the rest of the world, instead of hazarding the final loss of so great an object by jarring and divided councils.

* * * * * * *

I have, &c.,

W. C. RIVES.

Mr. Clayton to Mr. Lawrence.

No. 4.] DEPARTMENT OF STATE,
Washington, October 20, 1849.

SIR:

* * * * * * *

If, however, the British Government shall reject these overtures on our part, and shall refuse to cooperate with us in the generous and philanthropic scheme of rendering the interoceanic communication by the way of the port and river San Juan free to all nations upon the same terms, we shall deem ourselves justified in protecting our interests independently of her aid, and despite her opposition or hostility.

With a view of this alternative, we have a treaty with the State of Nicaragua, a copy of which has been sent to you, and the stipulations of which you should unreservedly impart to Lord Palmerston.

You will inform him, however, that this treaty was concluded without a power or instructions from this Government; that the President had no knowledge of its existence, or of the intention to form it, until it was presented to him by Mr. Hise, our late chargé d'affaires to Guatemala, about the first of September last; and that consequently we are not bound to ratify it, and will take no step for that purpose if we can, by arrangement with the British Government, place our interests upon a just and satisfactory foundation. But if our efforts for this end should be abortive, the President will not hesitate to submit this or some other treaty which may be concluded by the present chargé d'affaires to Guatemala to the Senate of the United States for their advice and consent, with a view to its ratification, and if that enlightened body should approve it, he also will give it his hearty sanction, and will exert all his constitutional power to execute its provisions in good faith, a determination in which he may confidently count upon the good will of the people of the United States.

* * * * * * *

I am, &c.,

JOHN M. CLAYTON.

The treaty with Nicaragua, negotiated by Mr. Hise and referred to in the above correspondence, will be found in inclosure No. 6.

The negotiation thus opened in London was superseded by the execution in Washington of the Clayton-Bulwer treaty, which will be found herewith (inclosure No. 7).

Immediately after the conclusion of this treaty, and for the purpose of securing promptly the execution of its provisions, Mr. Webster and Sir John Crampton agreed upon a draft of treaty to be executed by Nicaragua and Costa Rica with each other, by which all questions of limits between them should be adjusted, and such other provisions adopted as would allow the prompt application of the principles of the Clayton-Bulwer treaty to the construction of the canal. That agreement you will find herewith (inclosure No. 8).

Mr. Webster to Mr. Lawrence.

No. 77.] DEPARTMENT OF STATE,
Washington, May 14, 1852.

SIR: Your dispatches to No. 176, inclusive, have been received.

On the 30th ultimo, as you may have been informed through another channel, Mr. Crampton and myself agreed upon and signed a proposition to Costa Rica and Nicaragua for the adjustment of their disputes upon the subject of boundary and also for the adjustment of the controversy between Great Britain and Nicaragua in regard

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to the territory claimed by the Mosquito Indians. If this proposition should be accepted by those Republics, a quadripartite treaty will probably be entered into by them, Great Britain, and the United States. A principal impediment to the commencement or successful progress of the ship canal through Nicaragua will then have been removed.

Considering that the United States and Great Britain have jointly agreed to protect such a canal, and in consequence of their possessions on the coast of the Pacific and of other obvious causes have a similar interest in its success, it seems desirable that the capital required for its construction should be advanced by the citizens and subjects of both countries. If, however, English capitalists should not be disposed to invest their funds in the enterprise, the means for its construction can easily be obtained in this country, whenever our citizens shall be satisfied of its practicability and that it would yield a regular and fair profit. Convinced of the great importance of the work, the Government of the United States would always be disposed to aid in the prosecution thereof to the full extent of its constitutional power. It is not likely, however, that the canal company will need any such assistance from this Government.

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I am, &c., &c.,

DANIEL WEBSTER.

Mr. Kerr, at that time minister resident in Central America, and Mr. Walsh were appointed by the United States, and Consul-General Wyke by Great Britain, as special commissioners to submit this treaty to the States of Costa Rica and Nicaragua for adoption. The negotiations failed, owing to the unwillingness of the latter power, and so much importance did this Government attach to their joint action on this subject, that Mr. Everett, as Secretary of State, instructed Mr. Kerr, 30th December, 1852:

You will also make known to the Nicaraguan minister that the President can not consent to renew the discussions with his Government on the subject of interoceanic communication by the Nicaraguan route without a satisfactory explanation of the grounds on which the Government of Nicaragua peremptorily rejected the propositions which, in conjunction with Her Britannic Majesty's minister, the Government of the United States agreed upon for the purpose of removing the obstacles which had existed.

The failure to settle the questions by this negotiation left open points of difference between the United States and Great Britain which appear in the discussions and negotiations from that date to 1860, but which do not need particular review, for within that period Great Britain, with the knowledge of the Government of the United States, and as was recognized by General Cass, Secretary of State, and President Buchanan, with due regard to the expressed wishes of our Government, negotiated with Nicaragua, Honduras, and Guatemala three separate treaties, the conclusion of which was thus notified to the Government of the United States by Lord John Russell, H. B. M.'s secretary of state for foreign affairs, August 4, 1860, through Lord Lyons:

In my dispatch of the 16th August last, I instructed your lordship to communicate to General Cass a copy of the treaty which Her Majesty's Government had concluded with the Republic of Guatemala, for defining the boundary between that State and the settlement of Belize, * * * and you were directed to state to General Cass frankly and without reserve the earnest desire felt by Her Majesty's Government that the controverted questions arising out of the Clayton-Bulwer treaty should be settled, and to explain to him the nature of the instructions with which Sir Charles Wyke had been furnished with that object.

I have now to instruct your lordship to communicate to General Cass the inclosed copies of treaties which have been concluded by Her Majesty with the Republics of Honduras and Nicaragua.

These treaties, as you will perceive, provide for the relinquishment of the protectorate of the Mosquito Indians and for the cession of the Bay Islands to Honduras, and thus, it may be hoped, finally set at rest the questions respecting the interpretation of the Clayton-Bulwer treaty, which have been the subject of so much controversy between this country and the United States.

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At the time of these negotiations General Cass had signed a treaty with the minister of Nicaragua known as the Cass-Yrisarri treaty. This treaty was never ratified, but will be found in inclosure 9, together with such correspondence as is necessary to show how far this treaty and these negotiations accorded in their purpose.

In 1866 the following correspondence took place between Mr. Seward and Mr. Adams:

No. 1745.] DEPARTMENT OF STATE,
Washington, April 25, 1866.

SIR: Toward the close of Mr. Polk's Administration the British Government, disturbed perhaps by the recent acquisition of territory by the United States on the Pacific, showed what we thought to be a disposition to contend with the Governments of the Central American States, with the ultimate object, as was supposed, of acquiring dominion there, and also a control of any ship canal which might be made between the two oceans by the way of the San Juan River and Lake Nicaragua. British subjects had long before that time lent those Governments money, the interest on which was in arrears, chiefly in consequence of the strife between the States which ensued upon their separation and as a confederacy.

War measures were determined upon to recover this interest; among others, the seizure of the island of Tiger, belonging to Honduras, in the Bay of Fonseca, was made by a British naval force in October, 1849. This seizure was protested against by Mr. Squier, the United States chargé d'affaires in Nicaragua, and a disavowal of the proceedings by the British Government was required by Mr. Clayton in an instruction to Mr. Abbott Lawrence, at London, of the 29th of December, 1849.

Insomuch as one route (by some supposed the best route) for the ship canal from the lake to the Pacific lay along the Estero Real, which empties into the Bay of Fonseca near Tiger Island, Mr. Squier deemed himself warranted in incorporating in a general commercial treaty with Honduras, which he signed on the 28th of September, 1849, provisions for acquiring land for naval stations on that island or on the continent in its vicinity. By what is called a protocol of the same date, Honduras ceded Tiger Island to the United States, pending the ratification or rejection of the general treaty, provided that the time should exceed eighteen months.

These stipulations were entered into by Mr. Squier without instructions from the Department, and when the treaty and additional articles were received he was reproved for them. They were never laid before the Senate. It is not to be doubted, however, that they occasioned uneasiness to the British Government, and in a great degree led to the Clayton-Bulwer treaty of the 19th of April, 1850.

The preamble of that treaty states that its object was to fix the views and intentions of the parties in regard to the ship canal.

The first article of the treaty, still referring to the ship canal, stipulates that neither party will erect fortifications commanding the same or in the vicinity thereof, or occupy or fortify or colonize or assume or exercise dominion in any part of Central America.

It seems obvious that the renunciation by the parties to this instrument of a right to acquire dominion in Central America was intended to prevent either of them from obtaining control over the proposed ship canal. At the time the treaty was concluded there was every prospect that that work would not only soon be begun, but that it would be carried to a successful conclusion. For reasons, however, which it is not necessary to specify, it never was even commenced, and at present there does not appear to be a likelihood of its being undertaken. It may be a question, therefore, supposing that the canal should never be begun, whether the renunciatory clauses of the treaty are to have perpetual operation.

Technically speaking, this question might be decided in the negative. Still, so long as it should remain a question, it would not comport with good faith for either party to do anything which might be deemed contrary to even the spirit of the treaty.

It is becoming more and more certain every day that not only naval warfare in the future, but also all navigation of war vessels in time of peace must be by steam. This necessity will occasion little or no inconvenience to the principal maritime powers of Europe, and especially to Great Britain, as those powers have possessions in various parts of the globe where they can have stores of coal and provisions for the use of their vessels. We are differently situated. We have no possession beyond the limits of the United States. Foreign colonization has never been favored by statesmen in this country either on general grounds or as in harmony with our peculiar condition. There is no change or likely to be any in this respect. It is indispensable for us,

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however, to have coaling stations under our own flag for naval observation and police, and for defensive war, as well as for the protection of our widely spread commerce when we are at peace ourselves. This want, even for our commercial marine, is nowhere more sensibly felt than on the track between Panama and San Francisco. The question then occurs, What points beyond our jurisdiction would be most eligible for this purpose?

Whatever opinion might be entertained in regard to any other sites, there would be no question that Tiger Island would be exceedingly desirable for that purpose.

Under these circumstances, you will sound Lord Clarendon as to the disposition of his Government to favor us in acquiring coaling stations in Central America, notwithstanding the stipulation contained in the Clayton-Bulwer treaty. In doing this, however, you will use general terms only, and will by no means allow it to be supposed that we particularly covet Tiger Island. You will execute this instruction at such time and in such way as to you may seem best, and inform the Department of the result so that the United States minister to Honduras may be directed to proceed accordingly.

It is supposed that you may probably be able to introduce the subject to the Earl of Clarendon's attention by suggesting that a negotiation with a view to the special end mentioned might be made an element in a general negotiation for settlement of the northwest-boundary question and of the conflicting claims of the two countries which have arisen during the late rebellion in the United States.

I am, sir, &c.,

WILLIAM H. SEWARD.

Mr. Adams to Mr. Seward.

No. 1211.] LEGATION OF THE UNITED STATES,
London, June 2, 1866. (Rec'd 13th June.)

SIR: Towards the close of the conversation I had with Lord Clarendon on the 29th of last month, I seized an opening to say something on the subject to which you directed my attention in your dispatch No. 1745, of the 25th of April. I did so rather in a casual way, as if it were a matter which had been floating in your mind for some time back in consequence of the inconvenience to which our naval steamers had been put during the war for the want of stations at which to place depots of coal for their use. I alluded rather vaguely to the coast of Central America as among the places in which this want had been most felt, and to the possibility that the terms of the Clayton-Bulwer treaty might interpose difficulties in the way of securing the most convenient point that we might desire. Whilst I did not feel myself altogether prepared to enter into specific questions just then, I desired to throw out the subject for his consideration as one to which I might perhaps presently be directed to return with more definite propositions.

His lordship replied by asking some questions as to the precise points contemplated, which I avoided answering on the ground, which is true, that I have not yet been able to refresh my recollection of the terms of the treaty, and by his remarking that the same thing was true as it respected himself.

He only retained a general impression of many conferences with one of my predecessors, Mr. Buchanan, on the subject and arguments presented by him, which he intimated were tedious enough and not altogether calculated to forward a settlement; these had been terminated by an arrangement made at Washington.

He would look the whole thing over at the same time that I might be doing so, too, after which he should be in a condition to consider the subject more maturely.

I closed by observing that this was precisely the extent to which I had intended to go to-day. I did not understand that there was any necessity of hurry in the matter. I had referred to the topic as one which might call for his lordship's consideration at some future moment, and to that end I thought it would be expedient as a preliminary step to bring it to his attention now.

I have, &c.,

CHARLES FRANCIS ADAMS.

In 1873 Mr. Fish instructed General Schenck:

No. 375.] DEPARTMENT OF STATE,
Washington, April 26, 1873.

SIR: You are aware that a main object of the Clayton-Bulwer treaty, so called, of the 19th of April, 1850, was to provide against obstruction by either party to a ship canal to the Pacific through Nicaragua. A work of that kind was then deemed specially necessary and desirable for us, as California had recently been acquired, the only practicable way to which was across the Isthmus of Panama, or around Cape

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Horn. For some time previously to the date of that instrument, and especially during the considerable period when the United States were without a diplomatic representative in Central America, it seemed to be the policy of the British Government to avail itself of what was called its protectorate of the King of Mosquitoes to wrest from Nicaragua that part of its territory claimed on behalf of that Indian chief, including, of course, the mouths of the San Juan River, by the way of which it was supposed the proposed ship canal must pass. The Clayton-Bulwer treaty effectually checked this pretension. It, also, in terms, forbade either party to occupy or fortify in any part of Central America. The British Government, probably actuated by an apprehension that this stipulation might be construed against their claims at Belize, Honduras, instructed Sir H. L. Bulwer to make the declaration of 29th of June, 1850, when the ratifications were to be exchanged, to the effect that they did not understand the engagements of the convention to apply to Belize and its dependencies. In a note to Sir Henry of the 4th of July, 1850, Mr. Clayton acknowledged that it was not the purpose of the convention to apply to Belize and its dependencies.

A similar acknowledgment is contained in a memorandum of the 5th of July, 1850, signed by Mr. Clayton, which says that he at the same time declined to affirm or deny the British title in their settlement or its alleged dependencies. Among the latter what are called the Bay Islands were claimed to belong. The British Government, however, having converted them into a separate colony, this and the continuance of its protectorate, so called, over the Mosquito Indians, were regarded as virtually such breaches of the Clayton-Bulwer treaty as to call for the remonstrances which Mr. Buchanan, and subsequently Mr. Dallas, were instructed to address, and which they did address to that Government. The answer of that Government was in substance that the Clayton-Bulwer treaty was merely designed to provide for the future, and was not intended to affect any rights or claims which Great Britain may have had in Central America at the time of its conclusion. This pretension was effectually answered by Mr. Buchanan in his reply to Lord Clarendon's memorandum on the subject, which you will find on the file or record of your legation. Ultimately, on the 17th of October, 1856, what is called the Dallas-Clarendon treaty was signed at London. The object of this instrument was to compose the differences between the two Governments, especially in regard to the Bay Islands and the Mosquito protectorate. When the treaty reached here it must have been obvious to the Executive that if it accomplished either of those purposes this was in an incomplete and unacceptable way. Still the treaty was laid before the Senate, which body, though it did not absolutely reject it, appended to it so many and such important amendments that they were not accepted by the British Government, and the whole business proved abortive.

The British Government then sought negotiations with Nicaragua, Guatemala, and Honduras, separately, to attain the principal objects which it hoped to compass by means of the Dallas-Clarendon treaty, if it had gone into effect as it was signed.

The purposes of that Government were in the main accomplished. On the 28th of January, 1860, a treaty between Great Britain and Nicaragua was signed at Managua. Though this instrument restored to that Republic the nominal sovereignty over that part of its territory which had previously been claimed as belonging to the kingdom of the Mosquitos, it assigned boundaries to the Mosquito Reservation probably beyond the limits which any member of that tribe had ever seen, even when in chase of wild animals. Worst of all, however, it confirmed the grants of land previously made in Mosquito territory. The similar stipulation on this subject in the Dallas-Clarendon treaty was perhaps the most objectionable of any, as it violated the cardinal rule of all European colonists in America, including Great Britain herself, that the aborigines had no title to the soil which they could confer upon individuals.

This rule has repeatedly been confirmed by judicial decisions, and especially by the Supreme Court of the United States. It is supposed to be superfluous to add that it is understood the grantees of the Mosquito chief, respecting whose interests the British Government was so solicitous, were the subjects of the latter.

It is supposed that the expedition of Walker to Nicaragua made such an unfavorable impression on public opinion there, in respect to this country, as to prepare the way for the treaty with Great Britain. A rumor was current in that quarter, and was by many believed to be true, that Walker was an agent of this Government, which, it was supposed, had covertly sent him thither to obtain control of the country. This, however, was so far from the truth that everything within its power was done by this Government towards preventing the departure of Walker.

Besides the treaty with Nicaragua, just adverted to, there was a treaty between Great Britain and Honduras, signed on the 28th November, 1859, the main object of which was the restitution to the latter of the Bay Islands, which had for some time before been converted into a British colony.

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This treaty also contained stipulations in regard to Mosquito Indians in Honduras territory similar to that in the treaty with Nicaragua.

On the 30th of April, 1859, a treaty between Great Britain and Guatemala was also signed, by which the boundaries of the British settlement at Belize, so called, were extended to the Sarstoon River. This instrument contained provisions for the appointment of commissioners to mark the boundaries, and for the construction of a road from Guatemala to the fittest place on the Atlantic coast near Belize. By a supplementary convention between the parties, of the 5th of August, 1863, Great Britain agreed, upon certain conditions, to contribute fifty thousand pounds sterling towards the construction of the road referred to.

From the note of the 4th of December last, addressed to this Department by M. Dardon, the minister of Guatemala here, a copy of which is inclosed, it appears that when the joint commission for running the boundary line reached the Sarstoon River the British commissioner, finding that his countrymen were trespassing beyond that limit, refused to proceed, and the stipulation on the subject, if not virtually canceled, has, at least, been suspended.

The supplementary convention not having been ratified by Guatemala in season, it is stated that the British Government has notified that of Guatemala that it would regard the stipulation on the subject of the road contained in the treaty of 1859 as at an end.

Other important information on these subjects is contained in the letter and its accompaniments of Mr. Henry Savage to this Department of the 16th of October last, a copy of which is inclosed. He is a native of this country and at one time was consul at Guatemala.

He has frequently, in the absence of a diplomatic agent of the United States in that quarter, furnished this Department with valuable information in regard to Central American affairs.

Mr. Dardon says that his Government also regards its treaty of 1859 with Great Britain at an end, and requests on its behalf the cooperation and support of this Government toward preventing further encroachments by British subjects on the territory of Guatemala. It is believed that if such encroachments are authorized or countenanced by that Government it will be tantamount to a breach of its engagement not to occupy any part of Central America. Before, however, officially mentioning the subject to Earl Granville, it would be advisable to ascertain the correctness of the representation of Mr. Dardon as to the cause of the discontinuance of the demarkation of the boundary.

If the statement of that gentleman should prove to be correct, you will then formally remonstrate against any trespass by British subjects, with the connivance of their Government, upon the territory of Guatemala, as an infringement of the Clayton-Bulwer treaty, which will be very unacceptable in this country.

I am, &c.,

HAMILTON FISH.

In 1867 a treaty was executed and ratified between the United States and Nicaragua, the 14th, 15th, 16th, and 17th articles of which relate to an interoceanic canal, and copies of the same are hereto attached. (Inclosure 10.)

Negotiations with Nicaragua upon this subject were again opened between Mr. Fish and Señor Cardenas, in 1877, the correspondence in reference to which was forwarded with a confidential circular by the Secretary of State to the United States ministers abroad, and they are submitted herewith. (Inclosure No. 11.)

In further connection with the relations of the United States and the Central American States in reference to interoceanic communication, it is only necessary to ask your attention to the XIV article of the treaty of 1864, between the United States and Honduras. (Inclosure 12.)

I would also call your attention to a correspondence which has not been incorporated in the foregoing summary, because it was not part of those negotiations, the current history of which I have briefly stated. Its importance, however, as an indication of the general views of the Governments of the United States and Great Britain upon the subject of interoceanic connection entitles it to consideration. (Inclosure 13.)

It will be observed from the whole tenor of the correspondence of

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this Government with the Central American States, and with the United States of Colombia, on the subject of interoceanic transit by railroad or canal, that the United States has constantly and earnestly desired to stimulate and assist these States in the opening of such routes of commerce through their respective territories. The treaties that have been made with these States, as well as those more vigorous and efficient ones which have been attempted, but have failed of consummation, have all shown a fixed policy of this Government to corroborate the inadequate resources of these States by the security to capital and to commerce which the effective guaranty of the power and faith of this country, in support of these routes, was calculated to give.

The purpose of this Government that the benefits of the routes to be opened should be shared upon equal terms and with equal security by the commerce of the world has been equally evident and uniform. Its own relations to the enterprises projected have never been pressed beyond the measure of control commensurate with the responsibilities and burdens which the recognized exigencies of the situation required it to assume.

The paramount interest of the United States in these projects of interoceanic communication across the American Isthmus has seemed quite as indisputable to the European powers as to the States of this continent. The course of their action and correspondence, so far as they have treated the subject, exhibits a clear appreciation of the public and general motives which had marked, and might be trusted to continue to mark, any dealing by this Government with these great interests of commerce and civilization in the Western hemisphere. Accordingly they have shown no disposition to take part in any political arrangements of this American question, except in accord with the United States, and upon an evident desire of this Government that they should do so.

Hitherto no movement of private capital, either at home or in the European markets, has shown any tendency to embrace the opportunities which the diplomatic efforts of this Government had opened to interoceanic traffic, except in the instance of the Panama Railroad Company, a domestic corporation, which, under the shelter of our treaty with Colombia, has established and maintained, with the greatest advantages to commerce, its route for freight and travel across the Isthmus of Panama. The ownership of this route by a domestic corporation, the moderate capital invested in it, and its character and structure as a railroad, have imposed no very onerous responsibilities upon this Government in the observance of its stipulated obligations under the treaty with Colombia. The instances in which our intervention has been asked, and those in which it has been given, in connection with the Panama Railroad traffic, in pursuance of this treaty, have been brought to notice in the preceding narrative.

The recent contract or concession made by the Government of Colombia, with an association of foreign projectors, the text of which is herewith annexed (inclosure No. 5), brings to attention some considerations of more or less practical importance, according as we may estimate the feasibility of the project and the financial prospects of the projectors. It does, however, present an occasion for a deliberate indication by the Government of the United States of its relations to enterprises of this nature, both in its position as an American power and under its spe-

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cific treaty rights and obligations towards the United States of Colombia.

In the mere aspect of a contribution of capital, in the motive of profit to the investors, on the one part, and of a proprietary administration by Colombia of the transit through its territory as a source of legitimate revenue and local prosperity, the proposed canal might seem to fall within the ordinary conditions of pecuniary enterprise and internal development, which the general interests of commerce favor, and which it has been the policy of this Government to stimulate and assist.

But this view of the subject is quite too narrow and too superficial. It overlooks the direct relations of the other American nations to the contemplated change in the route of water-borne commerce, and the indirect but equally weighty considerations by which the relations of the American nations to the great powers of Europe will be modified by this change. It does not penetrate the formal character of the contract as between private capital and local administration, and appreciate its real and far-reaching operation upon the commercial and political interests of the American continent.

The United States, therefore, as the great commercial and political power of America, becomes, necessarily, a principal party to any project which shall exhibit such solidity and proportions as to distinguish it from the unsubstantial and illusory schemes which have from time to time proposed to solve the problem of interoceanic transit. The question involved presents itself distinctly to this Government as a territorial one, in the administration of which, as such, it must exercise a potential control.

While this attitude of the United States to the political and commercial problem of an interoceanic canal, at whatever point, would seem to attach to their position on the continent, the particular rights and obligations in reference to any transit across the Isthmus of Panama, which grow out of the mutual engagements of the treaty with Colombia, fix more definitely the interest of this Government in any material changes of that isthmus as the theater of these rights and obligations.

It is manifest that so stupendous a change from the natural configuration of this hemisphere as transforms the Isthmus of Panama from being a barrier between the Atlantic and Pacific oceans into a gateway and thoroughfare between them for the navies and merchant ships of the world, bears directly upon the weight and burden of our guarantees under that treaty. It is equally manifest, and only less important, that the organization and nationality of an immense capital and the administration of a great and growing force of managers and laborers, and the throng of population likely to attend the prosperity of the enterprise, affect essentially the conditions under which the United States may be called upon to perform the engagements of that treaty. The guarantee of the neutrality of the transit and of the sovereignty and property of Colombia in the isthmus are one thing while the isthmus remains in its natural and unpeopled state, and quite another when it shall have been opened to the interests, the cupidities, and the ambitions of the great commercial nations, and occupied by populations of foreign allegiance and discordant habits.

So obvious are these propositions that it may well be assumed that no contract or negotiations could ever be entered into between private projectors and the Government of Colombia except in contemplation of this position of the United States under the treaty, and of the

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necessity that both the private interests and the public engagements involved, in reliance upon the power and faith of this Government for their protection, must be conformed to its rightful participation and control in any arrangements that may seriously affect the discharge of its stipulated responsibilities.

WM. M. EVARTS.

List of accompanying papers.

No. 1. Mr. Marcy to Messrs. Morse and Bowlin. No. 28, December 3, 1856, with accompaniments.
No. 2. Mr. Seward to Mr. Sullivan.
No. 3. Convention with Colombia of January 14, 1869, being confidential Ex. Doc. L. L., Sen., 40th Cong., 3d session.
No. 4. Convention with Colombia of January 26, 1870, being confidential Ex. Doc. Q., Sen., 41st Cong., 3d session; and confidential Ex. Doc. E., Sen., 41st Cong., 3d session.
No. 5. Concession from Colombia to Lucien N. B. Wyse, March 20, 1878, with decree of May, 1878, modifying the concession.
No. 6. Convention between the United States and Nicaragua of June 21, 1849.
No. 7. Convention between the United States and Great Britain, April 19, 1850.
No. 8. Proposed basis of an arrangement for settling Central American affairs, April 30, 1852.
No. 9. Convention between the United States and Nicaragua, November 16, 1857; and
Mr. Cass to Lord Napier, April 6, 1858.
Same to same, November 8, 1858.
Mr. Cass to Mr. Dimitry, September 22, 1859.
Mr. Cass to Mr. Clarke, October 1, 1859.
Same to same, February 18, 1860.
Lord Napier to Earl Malmesbury, April 4, 1859.
Earl Malmesbury to Sir W. G. Ouseley, April 30, 1859.
Lord Lyons to Earl Malmesbury, May 10, 1859.
Same to same, May 30, 1859.
Same to same, May 30, 1859.
Earl Malmesbury to Lord Lyons, June 16, 1859.
Lord Lyons to Earl Malmesbury, July 5, 1859.
Lord J. Russell to Mr. Wyke, August 15, 1859.
No. 10. Articles 14–19 of treaty between the United States and Nicaragua, June 21, 1867.
No. 11. Mr. Fish to United States ministers, February 28, 1877, with correspondence between Mr. Fish and Mr. Cardenas.
No. 12. Article 14 of treaty between the United States and Honduras, July 14, 1864.
No. 13. Correspondence between Mr. Cass and Lord Napier as follows:
Lord Napier to Mr. Cass, May 31, 1857.
Same to same, August 24, 1857.
Mr. Cass to Lord Napier, September 10, 1857.

1.—*Mr. Marcy to Messrs. Morse and Bowlin.*

No. 28.] DEPARTMENT OF STATE,
Washington, December 3, 1856.

GENTLEMEN: You have been furnished by the President with a joint authority to conduct an important negotiation with New Granada.

It has been and still is the anxious desire of the President to maintain a cordial good understanding between the United States and the Republic of New Granada. He is unwilling to believe that the Government of that Republic will persist in the attempt to impose high tonnage duties on American vessels visiting the Granadian ports

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or to burden our mails crossing the Isthmus of Panama with a most exorbitant tax. The Government of New Granada has bound itself by solemn treaty stipulations and an explicit contract with the Panama Railroad Company, a corporation authorized by its laws and composed of American citizens, as we understand them, to abstain from both impositions.

It is presumed that an appeal to the good faith of the Granadian Government is all that can be necessary to induce it to abandon these pretensions. It is not apprehended that you will have any difficulty in coming to a proper understanding upon these subjects. The archives of the legation will put you in possession of the views of your Government thereon. The Panama outrage of the 15th April last, involving the destruction of several lives and the plunder of a large amount of property, does not seem to have received the attention or called forth the action which its serious importance demanded from the Government of New Granada. Great pains have been taken by this Government to acquire full information of the transaction in all its details, and the result discloses a scene shocking to the feelings of humanity. The evidence which has been collected, together with the commissioner's report, is placed in your possession. The examination of them can not, it is believed, leave any doubt that New Granada is bound to make ample indemnity for the injuries sustained by our citizens in that unfortunate affair. Her subsequent action in regard to it has disappointed the just expectations of this Government. No efficient measures have been taken to punish the guilty actors of that outrage, no attempt has been made to recover the property pillaged from the passengers. This indifference of the Government in regard to the outrageous conduct of the population at Panama on that occasion emboldens the offenders and others like minded to hope for impunity if engaged in similar lawless proceedings.

This course of conduct on the part of New Granada can only be accounted for upon the ground that New Granada has not the ability to bring to punishment the wrongdoers and to afford proper protection in future to the property and persons on the Panama route. There are good reasons for believing that further outrages would have occurred on that route if the population had not been deterred by the presence of a considerable naval force in the harbors of Panama and Aspinwall. The lawless character and the insubordinate spirit of a large portion of these residents justify the most serious apprehensions of danger to the lives of the passengers and to property passing over the Isthmus in case of the withdrawal of our vessels of war from those harbors. No measures of precaution were taken before the lamentable occurrence of the 15th of April, though there were well-founded fears of serious disturbance; nor since that event have any been adopted by New Granada to discharge her duties of protection to the property and persons of our citizens on that route. Assuming that the Government of that republic has not the ability to maintain order and afford security, she is bound to agree to any fair arrangement to accomplish those objects.

You are herewith furnished with the *projêt* of a convention for that purpose, and instructed to urge the acceptance of it upon that Government.

So far as respects the establishment of municipalities at Panama and Aspinwall, to which most reluctance is apprehended, it is to be observed

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that this arrangement is, in all its essential features, similar to the one recommended by this Government and that of Great Britain to be established at San Juan de Nicaragua, or Greytown. It is also similar to that made between Great Britain and the Republic of Honduras in regard to the Bay Islands. San Juan is situated in relation to the Nicaragua route as Aspinwall and Panama are in regard to the route which terminates at those two places, and the measure deemed appropriate for the safety of the former is equally required for the safety of the latter. Both of these precedents, which have the approval of Great Britain, and the latter the further approval of this Government, may, with great force, be urged upon New Granada as inducements to the acceptance of a similar arrangement at Panama and Aspinwall. It is not designed, as you will perceive, to secure any exclusive advantage to the United States. To remove all objections of this sort, an article is proposed securing the common use of the Panama route to all foreign nations.

Should this Government get the control of the road it would at once take measures to satisfy foreign powers that it would be kept open for their common use on fair terms, and they would be asked to become parties with the United States to a guaranty for the neutrality of that part of the Isthmus. If the United States should pay, as they propose to do, a large sum of money to secure the safety of that route, they would naturally expect some equivalent therefor, which would probably be some special terms in relation to transportation of their mails, soldiers, sailors, and national property. The arrangement does not propose a full cession of the sovereign rights of New Granada over the territory included in the two municipalities, though it is to a considerable extent a restriction upon those rights. This arrangement is not, it is believed, of an unusual character. In organizing the General Government of the United States the several States reserved to themselves a large portion of their original sovereign rights.

The second article in the *projêt* proposes a transfer of the reserved rights of New Granada in the charter to the railroad company. The amount of money which the United States proposed to give for this assignment will be more than equivalent to what will ever be paid by the company to New Granada. She ought to recollect that the obligation of the company to pay her for the right of transit is counterbalanced by her obligation to afford full protection to the route. To fulfill this obligation would probably cost her an expenditure quite equal to what she would receive from the company. By the proposed transfer to the United States she is entirely released from the duty of protecting the route or paying heavy damages in case of neglecting that duty. The United States have already had to assume this duty by keeping force at each end of the route to prserve order and prevent outrages similar in character and consequences to that of the 15th of April last. It can not be expected that this Government should be satisfied with the bare assurance of future protection after what has happened, and New Granada is apparently without the means of restraining and controlling the population which occupies the Isthmus. She has not shown herself able to punish the well-known perpetrators of a most aggravated wrong, nor has she taken any effective measures to guard against the recurrence of such scenes. It must be evident to New Granada that things can not remain as they are. You will be able to urge many cogent reasons for the proposed transfer,

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and it is hoped they will commend themselves to the approval of the Granadian Government.

The Republic of New Granada is, as well as the United States, deeply interested in a safe and unobstructed passage over the Isthmus within her limits, and it is not anticipated that it will be reluctant to concur in the arrangement for that object suggested in the accompanying *projêt*.

It is proposed in the sixth article of that *projêt* to purchase or acquire control over the Island of Taboga, and some other small island, lying together in the harbor of Panama. It is not supposed that New Granada will seriously object to transfer the sovereignty or the control of them to the United States for the liberal consideration which you are authorized to offer.

It is important to the commerce of the United States, so long as the Panama route is the principal thoroughfare across the Isthmus, that ample provision should be made for the safety of vessels, which will, of course, in great numbers resort to the port of Panama.

It is not merely on account of security and refuge for our ships that such a place is needed, but for an establishment to make repairs, deposit goods, timber, coal, &c.

Several rival routes across the Isthmus are about to be opened, and the present one between Aspinwall and Panama will have to contend against a vigorous competition, without it can provide such conveniences and accommodations as the United States would afford if the *projêt* substantially as it is furnished you could be adopted.

The future success of the Panama route and its advantage to the Republic of New Granada depend in great degree upon the inducements the citizens and Government of the United States may have to use it. The possession of the islands in question would do much to identify the interests of this country with the present or any other route across the Isthmus that may be established through New Granada.

Article 6, numbered *one*, in the *projêt* proposes the cession of the sovereignty of the islands in the harbor of Panama, and also the island of Taboga, distant about nine miles from the city of Panama.

Article 6, numbered *two*, does not in terms confer the sovereignty of the islands to the United States, but it gives full use and control over them to this Government, and I am disposed to believe that the latter is the form of cession which will be preferred by New Granada, and it would alike be acceptable to this Government. Should you find that New Granada is unwilling to concede to the United States the control over all these islands, or shall require a larger sum than you are authorized to offer, you will then endeavor to get the three islands in the harbor near Panama, namely, Flamenco or Flamingo, Ilenao, and Perico.

The adjustment of the sums to be paid by New Granada as damages for the affair of the 15th of April, and by the United States for concession, &c., will, I apprehend be attended with much difficulty. The sum to be put in the blank of the fifth article must not be less than $400,000. This will hardly cover the just claims of the sufferers. The aggregate amount of the demands of all descriptions of which this Government has now notice is now about $600,000, but in many instances the damages may turn out to be excessive; if reduced to the lowest point, the above-named sum will hardly be sufficient to cover them. You will open the negotiation on this point with the suggestion of $500,000, but may, if you find a larger sum can not be obtained, come down to $400,000.

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I anticipate that for the proposed concessions and grants New Granada will expect a much larger sum than would be reasonable for her to demand or this Government could consent to pay. She probably overestimates the importance of the route over her territory, and particularly so in regard to its value to the United States. You will not fail to remind her that the route through Nicaragua is only temporarily embarrassed. It may soon be in successful operation, and has advantages over that of Panama in our intercourse with California and the Territories of Oregon and Washington. There are good reasons to believe that the routes through Honduras and at Tehuantepec will be opened without much delay, and if this Congress does not it is probable that the next will authorize the construction of a railroad through our own Territories to the Pacific. When either of these enterprises is executed the Panama route will lose its peculiar importance to the United States. This Government is, therefore, by this arrangement with New Granada procuring special advantages which may not last long, and it will not, therefore, be willing to pay a very oxorbitant price for them.

The establishment of the municipalities is only to effect that which New Granada herself is under obligation of duty and treaty stipulation to perform. With the United States and our citizens who are interested in the railroad she is under the most explicit engagements to protect the route. If she had fulfilled these engagements, and were enabled to do so in future, the arrangements in regard to municipalities would be unnecessary, and she can not, therefore, expect this Government should compensate her for making them. Without receiving scarcely any other advantages than those which this Government and our citizens have a right to receive from New Granada, this Government is taking upon itself burdens in order to render secure a route which New Granada is bound to protect and secure.

This security is not for the exclusive benefit of the United States, but is essentially so to New Granada herself, to all other nations, and to the railroad company which has her guarantee for that security.

For the possession of the islands, with the liberal authority over them which is contemplated by the convention, New Granada may reasonably expect compensation, yet it is by no means certain that she will not get by the arrangement in that respect more than she surrenders. The establishment of a naval depot on them by the United States will be a great advantage to Panama, and, indeed, to the whole Republic of New Granada.

It is not necessary that I should go into an enumeration of the benefits of such an establishment to New Granada, for they will readily occur to you; and in discussing that article in the convention you will not fail to impress them upon the Government of New Granada.

* * * * * * *

I am, &c.,

W. L. MARCY.

P. S.—The map herewith sent has four islands on it. If Culebra be an island it must be included in the cession along with the three named in the projét.—W. L. MARCY.

Flamenco. Ilenao. Perico. Culebra.

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PROJÉT.

Convention between the United States of America and the Republic of New Granada for the adjustment of claims of citizens of the United States and for settling other differences between the parties.

Whereas by the thirty-fifth article of the treaty of peace, amity, navigation, and commerce between the high contracting parties, concluded on the 12th of December, 1846, and ratified and exchanged on the 10th of June, 1848, a right of way or transit across the Isthmus of Panama within the territory of New Granada was granted to the United States and the citizens thereof, and certain rights and privileges were by that and other articles of the said treaty conferred on the Government and people of the United States in relation to the said right of way or transit;

And whereas a certain company, denominated the Panama Railroad Company, mainly consisting of American citizens, have, with a view to the enjoyment of the rights and privileges so conferred, and pursuant to a charter granted to said company by the Republic of New Granada, constructed a railroad across the said Isthmus;

And whereas it is for the mutual interest of the high contracting parties that this railroad, or any other interoceanic communication, which may be constructed within the limits of New Granada, should be secured from interruption and rendered safe for all persons and property passing or designed to pass over the same:

The high contracting parties do, for the purposes aforesaid, enter into the following stipulations: The President of the United States having, for this object, conferred full powers on James B. Bowlin, esq., the minister resident of the said United States accredited to the Republic of New Granada, and Isaac E. Morse, esq., a citizen of the said United States; and the President of New Granada having conferred similar powers upon , who have exchanged their said powers, which were found to be in due form.

Article I.

It is hereby agreed that New Granada shall constitute and declare—

First. That the port of Colon, otherwise called Aspinwall, and the port of Panama shall be free ports.

Second. That a district of country twenty English miles in width, bounded on the north and south by lines running from the Atlantic to the Pacific Ocean in the general direction equi-distant, or as nearly so as practicable, from the present line of the Panama Railroad, and including within the same the ports and cities of Aspinwall (Colon) and Panama shall be under the exclusive municipal jurisdiction of the inhabitants residing therein, New Granada still retaining the sovereignty over the same, to be exercised in any manner not inconsistent with the municipal jurisdiction and powers herein conceded to the residents of said district.

Third. That there shall be two municipalities established within the said district, one including Panama, and the other Colon, otherwise called Aspinwall, and the jurisdiction of each shall extend to a line drawn across said district at a distance midway between the two cities, or as nearly so as may be, and the inhabitants of each shall have the following rights and privileges, subject to the specified restrictions:

(A.) The right to govern themselves by means of their own municipal governments, to be administered by legislative, executive, and judicial officers, elected according to their own regulations. The right to vote at all elections shall be confined to freeholders and residents owning personal property to the amount of $——.

(B.) Trial by jury in their own courts.

(C.) Perfect freedom of religious belief and of worship, public and private.

(D.) Neither of the said municipal governments shall lay any duties on goods exported, nor any duties of tonnage of vessels, except such as may be necessary for the police of the ports and the maintenance of light-houses and beacons. Nothing herein contained shall impair or abridge the right of the municipal authority of the said governments to levy taxes by the ordinary mode of taxation on the real and personal property of the inhabitants for the purpose of raising the necessary sums for defraying the expenses incident to the due administration of public affairs in all branches thereof.

(E.) Exemption from military service, except for the defense of either of the territories aforesaid.

Fourth. That each of the said municipalities shall enact suitable laws for the protection of the said Panama Railroad, or any other transit way across the Isthmus, for the security of the persons engaged upon the said road or way and of the passengers and all property passing or intended to be transported over the said road, and shall cause the same to be duly executed.

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Fifth. That whenever it shall be deemed necessary and the Panama Railroad Company or its agent shall make application to the United States consul at Aspinwall or Panama for that purpose such consul shall require of the mayor or chief magistrate of either city a police force for the protection of the Panama Railroad, or any other route of travel and transportation across the Isthmus, within the district aforesaid, or for the security of passengers or property passing or intended to be passed over the said road or route, or for the prevention or removal of any interruption of the said road or route the said mayor or chief magistrate shall promptly furnish the same. In case the mayor or chief magistrate shall refuse or neglect to furnish such force at the request of the consul, the consul shall then have authority to make a direct call on the said police, whose duty it shall be to obey such call; and in case such call is not complied with, the consul may organize and take charge of a temporary police force, and those composing it shall have the same protection for their acts as the regular police force are entitled to. The said police, while upon duty for that purpose, shall be subject to the orders of the United States consul requiring the same, and shall be kept in service so long as he shall determine such force to be necessary, and the whole force or any persons belonging to it shall be discharged when the said consul shall request the same to be done. The civil authorities of the municipalities shall in no way embarrass or interfere with the action of the said police force while executing the orders of the said consul for the protection and security aforesaid, but shall lend their aid and assistance, if need be, to render the police force efficient for that purpose.

In order to defray the expenses of such police force when so called out, the United States consuls at Aspinwall (Colon) and Panama shall have authority to make an assessment, or to levy and collect taxes to the amount needed for that purpose, upon the railroad and upon passengers and property passing over the railroad or route; but no taxes, assessments, or duties shall be levied by the municipal authorities at Aspinwall (Colon) or Panama upon the railroad passengers or their property, or foreign mails, or any articles of merchandise passing over the said road. But this restriction is not to apply to any tax levied by direction or authority of the United States consuls to defray the expenses of the police which may be called out to protect the railroad, passengers, and property transported over the same.

Sixth. That in case the route across the Isthmus of Panama within the district aforesaid shall be interrupted or shall be seriously threatened with obstruction or interruption by a force or a power which is likely to be too formidable to be put down by the police force which may be called out for that purpose, as herein provided, then the naval force of the United States which may be in or near either of the harbors at the extremities of said road or route may be used for the purpose of protecting, keeping open, and securing a free and safe passage over the said road, and the Government of the United States may also, if it should deem it necessary, send, for the same purpose, into the said district, or any part of it, or organize therein, a military force; but whenever the exigency which may have led to the employment of the naval or military force of the United States shall cease the same shall be withdrawn from the said territory.

The high contracting parties shall each appoint, within three months after the exchange of the ratifications of this convention, a commissioner, and the two commissioners shall immediately proceed to establish and mark the lines of the said district, and shall devise a mode for organizing the municipalities, and make needful regulations for executing the same.

The high contracting parties hereby agree to respect the municipal governments hereby authorized to be established, and not to interfere in any way with the exercise of any of the powers granted or privileges conceded to the same, but will maintain with them friendly relations. Should either party at any time encroach upon the rights and privileges hereby granted and conceded, the other party may, at its discretion, and in any way it may deem proper, aid the said municipal government, or either of them, in resisting such encroachments. Should any foreign power invade the territories of the said municipal governments, or interfere with their rights and privileges, either party to this convention may assist these governments in defense of their territory and municipal rights.

Article II.

And it is expressly agreed by the high contracting parties that nothing contained in the foregoing article shall give to, or confer upon, the people of the before-described district, or either of the municipalities therein authorized, any of the rights, powers, or privileges reserved by the Republic of New Granada to itself by the charter granted to the Panama Railroad Company, or by any contract made with the said company; and that neither the said people or the municipalities shall have any control or juris-

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diction over that road or any other interoceanic communication that may be made in or through that district.

And New Granada, for the considerations hereinafter mentioned, does hereby transfer and assign to the United States all the rights, title, interest, and control which she has by charter, contract, or in any other manner in, to, and over the said Panama Railroad, with full power and authority to receive for their own use all sums of money or compensation stipulated to be paid by the said railroad company for the privileges, or for the right of transit conferred by the charter granted to, or any contract made with, the said Panama Railroad Company. The United States are authorized and empowered to exact and enforce all the obligations which the said Panama Railroad Company has contracted with New Granada.

And it is hereby furthermore agreed and stipulated that the United States shall have and enjoy, in regard to the said railroad company, all the right and authority in and over the said road that New Granada has at any time had and enjoyed, and they shall have full power and authority to alter, modify, or extend the charter of the said Panama Railroad Company, and to make any agreement with it in relation to the use of the said road, and they shall also have full and exclusive power to make any provision for the construction of any other railroad or passageway across the Isthmus of Panama within the district of country mentioned in the next preceding article on such terms as they may deem proper.

Article III.

If, happily, the high contracting parties should be engaged in war with each other, they do hereby mutually agree that the district of country before described shall be neutral territory; that neither party shall occupy the same for belligerent purposes (reserving the right of either to pass over it), nor shall either solicit or accept the services or aid of the said municipalities in the said war, but they shall remain neutral; neither shall in any way interrupt the transit within the district aforesaid, or obstruct or interfere with the ordinary operations of business on the said road, but the governments and citizens of each of the high contracting parties respectively shall have the same use of the road during any such war and the same security for their persons and property on the said road and within the district aforesaid as if the said parties were at peace.

Article IV.

It is hereby agreed that both parties shall have the free use of the Panama Railroad, or any other means of passage across the isthmus, within the said district; but the said road or route shall be open to the common use of all nations which shall by treaty stipulations agree to regard and treat the district of country aforesaid at all times as neutral, and to respect the municipal authorities therein established, and all such nations shall have the use of said road or route to be established within the said district upon fair and reasonable terms ; and they do further agree to invite foreign nations to join in the mutual guarantee of the neutrality of the said country, of the municipal governments aforesaid, and of the unobstructed use of the said Panama Railroad, or any other road or route which may be established across the isthmus within the limits of the territory before designated.

Article V.

New Granada hereby stipulates and agrees to pay, in the manner hereinafter provided, to the United States the sum of $———, to be applied by the said United States to satisfy the claims of those of their citizens who suffered bodily injuries in the riot at Panama on the 15th of April last, to indemnify those citizens who had their property taken from them or destroyed in that riot, including damages to the railroad company and its property, and to make suitable provision for the families of the citizens of the United States who were killed on that occasion.

On the payment of the above sum of $——— for the purposes aforesaid by the Government of New Granada the United States releases it from all further claim or demand on that account.

Article VI (No. 1).

In order to protect and render secure the transportation of persons and property across the Isthmus of Panama, and for the full enjoyment of the advantages of that interoceanic communication to the Government and people of the United States, it is important that there should be a safe and commodious harbor for merchant vessels and

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national ships near the termination of communication on the Pacific. New Granada does for that purpose cede to the United States the island of Taboga and the other islands in the harbor of Panama, to wit, Flamingo, Ilenao, Perico, Culebra, with all the rights and appurtenances thereunto belonging, in full sovereignty, to be owned and held forever by the United States in as full and ample a manner as they are or have been heretofore held by New Granada. It is understood that the cession now made of the said islands shall not impair the title of individuals to any part of the said islands, holding the same by *bona fide* grants from the Republic of New Granada or as assignees of such grants. Without other restriction the United States may hereafter exercise full and exclusive jurisdiction of the said islands of Taboga, Flamingo, Ilenao, Perico, Culebra.

ARTICLE VI (No. 2).

It being important to the interests of both the high contracting parties that there should be a safe and commodious harbor and shipyard or naval station at or near the termination of the route or transit way across the isthmus, on the Pacific, it is hereby agreed and stipulated that the islands of , or near the harbor of Panama, including the island of Taboga, shall be included within the municipality of Panama in the same manner and to the same extent as is the city of Panama; and that in case the United States shall see fit to establish on the said islands, or any of them, a shipyard and marine depot, or to occupy any place on the same as a naval station, they shall and may be under the authority of the United States. The said islands and the waters around them necessary for the purposes herein mentioned shall be placed under the control and jurisdiction of the United States, and the United States shall have full authority and power to make such laws and regulations as may be deemed by them necessary or proper for the security of ships, merchandise, and persons on the said islands, and for the protection of the piers, wharves, workshops, buildings, or any other structures that may be erected or constructed thereon. And they may also make such provision for maintaining order, peace, and the good conduct of persons on the said islands, and to punish offenders against the rules and regulations which may be there established by the United States, or under their authority; and the authority and jurisdiction herein conferred on the United States over the said islands and adjacent waters around the same shall be independent of any control by the municipal authority of the city or State of Panama or the Republic of New Granada, without the express consent of the United States, and then under such restrictions as may be imposed by them.

The United States agree not to protect offenders against the laws or government of the said city, state, or republic who may flee to the said islands, but, on proper demand made, to deliver them up or permit them to be taken therefrom. The property of every description on the said islands and waters about the same shall be exempt from all taxation, except that which may be imposed by the United States or by their consent, and the persons thereon shall be exempt from the civil and criminal jurisdiction of the city and State of Panama or the Republic of New Granada, unless the extent of the jurisdiction or authority of the municipality or the State of Panama, or of the Republic of New Granada, shall be such as the United States may from time to time designate.

Nothing herein contained shall interfere with the rights, title, or interest of the owners of the real estate on the said islands.

ARTICLE VII.

For and in consideration of the grants and cessions contained in the foregoing articles it is hereby stipulated and agreed that the United States shall allow or pay to the Republic of New Granada the full sum of dollars, currency of the said United States. Of the said sum of $, the United States shall retain the sum of $, specified in the fifth article of this convention, to be applied to the purposes in that article particularly designated, and the balance of $ shall be paid to the Republic of New Granada, in the city of New York, within sixty days after the exchange of the ratifications of this convention.

ARTICLE VIII.

The present convention shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by the President of the Republic of New Granada, with the consent and approbation of the congress of the

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same; and the ratifications shall be exchanged in the city of Washington within one year from the date of the signature thereof, or sooner if possible.

In faith whereof the respective plenipotentiaries have signed and sealed these presents in the city of Bogota, on the day of , in the year of our Lord one thousand eight hundred and fifty——.

2.—*Mr. Seward to Mr. Sullivan.*

No. 58.] DEPARTMENT OF STATE,
Washington, September 27, 1868.

SIR: Your dispatch No. 82, of the 12th August last, on the subject of the proposed canal across the Isthmus of Darien, has been received and taken into mature consideration.

In reply, I am directed to make the following observations on the articles of the convention submitted by you and on the amendments desired by the Government of the United States of Colombia:

ARTICLE I.

The United States of Colombia agree and consent that the United States of America shall make, and the United States of America agree to make, the necessary survey for such ship canal, and if they ascertain the same to be feasible, then to locate the same, together with all its necessary appendages and appurtenances of locks, ports, harbors, stations, supply feeders, and sluices on land and sea, upon the domain and within the jurisdiction of the United States of Colombia, and to adopt a plan of construction and to make thorough and detailed estimates of the expense and cost of construction; and for that purpose the United States of America may employ proper civil and military superintendents, engineers, accountants, and other agents, and laborers, ships of war and transports, the military force—however, not to exceed at any time five hundred rank and file without express consent of the United States of Colombia first obtained—and all persons engaged in such service, whether civil, naval, or military, shall, while so engaged, render lawful submission and obedience to the civil authorities of Colombia. When the survey and locations shall be complete the President of the United States shall certify the same, with the necessary maps and descriptions, to the President of the United States of Colombia, and the same surveys, locations, and descriptions shall be filed in the archives of the two Governments. The route and plan thus fixed may afterwards be varied as occasion shall require under the authority of the United States of America, due notice being given of such modifications to the United States of Colombia.

Said canal shall in no case be constructed on or across the route of the Panama Railroad, unless the company's consent has been first obtained.

EXPLANATION.

Article 1 is understood to be agreed upon by both parties.

ARTICLE II.

It is proposed in behalf of the United States to substitute in lieu of Article what follows:

The United States of Colombia agree to concede, set apart, appropriate, and devote to the purposes of such ship canal all the territory, including land, ocean, and tributary waters, which shall be designated for the purposes thereof in such plan, and which may be found necessary, including in any case ten miles of waste, unsettled, and unimproved lands on each side of the canal throughout its entire length; and all the materials for such construction found with the territory so to be conceded.

Private owners of property being entitled to have a just indemnity, to effect which the Government of Colombia shall order expropriations to be made according to its laws; but the valuation thereof in no case to be enhanced by reason of the proposed or actual construction of the canal.

At the expiration of this convention the United States shall give back to the Colombian Government all such lots or portions of the lands herein ceded on both sides

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of the canal as shall not have been appropriated or be necessary for the use or purpose of the said canal, and also all such lots or portions thereof as shall not have been alienated or disposed of by the United States of America.

EXPLANATIONS.

1. The English word "waste" used in the Colombian amendment does not with sufficient accuracy describe unsettled or unimproved lands, but rather means lands which are worthless or incapable of improvement or use.

2. The amendment proposed by the Colombian ministers *seems* to concede a tract of land ten miles wide on each side of the canal for the purposes of that canal, while in point of fact it concedes only half that quantity of land. The United States are to build the canal and defray its cost. All the lands which shall be conceded to them are expected to be sold and *its* avails to be applied in reimbursing the cost of the construction. Colombia is to pay nothing; and yet, according to the amendment proposed by her ministers, Colombia is to receive the avails of the sale of one-half of the territory conceded.

The concession of the lands required by the United States would not be required at all if it were believed that the capitalists would be procured without that inducement. I can not too earnestly express my conviction that the real hazard of the enterprise is not that Colombia shall concede more than is necessary to secure its success, but that all the inducements which can be offered by both Governments will be insufficient to invite the necessary capital.

3. It is supposed, indeed, that under the expropriation laws of Colombia private property would be valued without enhancement by the reason of the proposed or actual construction of the canal. There can be no harm, however, in establishing that principle definitely. The public patrons of the enterprise could afford to take no private property at all for the uses of the canal if they were to be charged in favor of individual citizens of Colombia with profits upon the outlay to be made by the patrons themselves.

4. The modification proposed by me in regard to the restoration of portions of domain at the expiration of the convention sufficiently explains itself.

ARTICLE III.—(Newly proposed by this Government.)

The United States of Colombia stipulate not to undertake or allow the opening of any other interoceanic canal, or of any new railway through their territory, from the Atlantic to the Pacific Ocean, without the consent of the United States.

EXPLANATION.

1. The intelligent economists who have been consulted are of opinion that the article, as originally proposed and as approved by the Colombian ministers, would be ineffectual as an inducement to capital without excluding any new interoceanic railway, as well as any other interoceanic canal.

ARTICLE IV.

The outlay, cost, and expense of the survey, location, construction, and equipment of the said canal and its ports, stations, depots, and harbors, including damages paid for private property, and the indemnity that may correspond to the Panama Railroad Company, should the case arrive, in accordance with the contract, celebrated by

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the Government of Colombia, and approved by Congress on the 15th of August, 1867, shall be for the account of the United States of America, but exclusively with reference to the purposes of this convention. The objects devoted in Article II by the United States of Colombia for the work of the canal shall be delivered to the United States of America, but exclusively for the purposes of this convention.

EXPLANATION.

The Colombian minister's amendment seems to be reasonable and proper, and is accepted.

ARTICLE V.—(New as now proposed by this Government.)

The United States of America shall construct the said canal, with its appendages and appurtenances, and may employ the necessary force of skill, art, and labor for that purpose, and may also maintain a necessary military and naval force. The civil employés engaged being subject to the laws and Government of the United States of Colombia; and the United States engage that the military and naval employés so engaged shall always conform themselves to the laws and Government of the United States of Colombia. The naval and military forces shall in no case exceed one thousand, rank and file, of both armies, unless the express consent of the United States of Colombia shall have been first obtained.

EXPLANATION.

1. The original Article V, on revision, seems to require amendment so as to prevent possible differences between the two nations in regard to the employés.

Civil employés will be directly subject to the laws of the Colombian Government as administered by the authorities. The United States guarantee that the military and naval forces, while remaining under the command of their own officers, will respect and obey those laws.

2. Doubtless five hundred, rank and file, would be an adequate force to protect surveyors against hostile Indians or other disturbers of the peace; but in prosecuting a work of so great magnitude as the proposed ship canal, the number of workmen employed at times might well be expected to fully exceed the number of five hundred or one thousand.

The Secretary of war of the United States has been consulted, and he is of opinion that to secure the public peace and a continuance of work in the contingency of surprise, it would be well to stipulate for a force of one thousand.

There would be no reason in any case to apprehend that the United States would be disposed to employ a force unnecessarily large. Every consideration of convenience and economy will incline them to use the smallest number possible. The United States have never shown a disposition to maintain military forces for political purposes in foreign countries.

ARTICLE VI.

As fast as the canal and its appendages and appurtenances shall be constructed, the control, possession, direction, and government of the same shall belong to and be exercised by the United States of America, the Government of the United States of Colombia at the same time being always at liberty after the exchange of this convention to maintain a permanent committee of agents, with a right to examine the accounts, inspect the operations concerned, measure the tonnage of vessels, and report thereupon to the Government of Colombia; but not to interfere with the survey, control, management, direction, and working of the canal.

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EXPLANATION.

This Government acquiesces in the modifications proposed by the Colombian ministers.

ARTICLE VII.

The Government of the United States shall establish a tariff of tolls and freights for the said canal. Such tariff shall be upon a basis which shall not allow of more than an aggregate of twenty-five per cent of net profits after first deducting the outlay upon the survey, location, construction, management, operation, and control of the canal, including in the cost of construction the damages which shall necessarily be paid for private property and indemnities, if any shall be found necessary and proper, to the Panama Railroad Company. Further, such tariff shall be on a basis of perfect equality for the two nations, and for all other nations who shall be at peace with both the United States of America and the United States of Colombia. But nothing herein contained shall be construed to prevent the two Governments from agreeing upon such a modification of the tariff as will enable the United States of Colombia to receive a reasonable proportion of such net revenue as is before mentioned, or such modifications as may discriminate in favor of both nations, if any political necessity now unforeseen shall at any time require it.

EXPLANATION.

1. Due consideration has been bestowed upon the amendments to this article proposed by the Colombian ministers. The result is that the United States find themselves obliged to decline all of those proposed amendments.

The seventh article, as originally written, proposed that the tariff of tolls and freights shall be on a basis of perfect equality for both nations, and for all other nations who shall be at peace both with the United States of America and the United States of Colombia.

The Colombian ministers, on the contrary, propose that the tariff shall be on a basis of equality for all nations, whether at peace or war. If, unhappily, Colombia shall at any time engage in war with a foreign nation, the United States of America do not suppose that the Colombian Government would expect to furnish unlimited transportation to its armed enemy. Nor could the United States of America consent to guarantee that Colombia would adhere to any possible stipulation for the practice of such magnanimity.

If, unhappily, the United States of America should be involved in a war with a foreign nation, a contingency which is not expected to take place within the life of the proposed convention, no Administration here could permit itself to allow the foreign enemy to use a work constructed by the United States, or their citizens, for the advantage of that enemy and to the prejudice of the United States of America.

With all due respect to the Colombian ministers, we think that the amendment proposed in this respect is impracticable and visionary.

2. The original Article VII proposes that the tariff shall be upon a basis which shall not allow a profit of more than twenty-five per cent upon the entire cost of the canal, with its indemnities, &c.

The Colombian ministers propose to strike out this limitation of the revenue profit of twenty-five per cent, with a view, doubtless, that by allowing larger profits the two Governments may derive revenue from the canal.

The proposed ship canal, like any other artificial channel of trade, will, all other things being equal, command business in proportion as its tariff of revenue is reduced. It is a thing hitherto unheard of that

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any such public work of internal improvement yields or can yield permanently a profit of more than twenty-five per cent upon its cost.

It remains to be seen whether the Darien ship canal will be more productive. It is certain, however, that every dollar of revenue that either the United States of America or the United States of Colombia can derive from the canal will be a tax, serving to abate its effectiveness for the purposes for which it is designed. If there are capitalists who would invest their money in constructing this canal with the purpose of affording direct revenue to either the United States of America or the United States of Colombia, it is believed this is the first instance where capitalists have ever shown so great devotion to any government. The principles of political economy which prevail in the United States of America forbid, and will continue to forbid, this Government from ever taking even one dollar of net revenue from the construction of any channel of navigation or transport.

In opposition to such a policy the United States of America encourage capitalists by offering them adequate and liberal rewards, and by reducing profits encourage business upon artificial highways. Government revenues are only expected to be derived from the increase of values and production which result from the construction of such works.

The Government of Colombia is invited to consider whether it is not impracticable for it to construct works of improvement upon principles different from those which are here perhaps too sharply expressed.

If it shall turn out that we are mistaken in our present anticipation that the work shall prove sufficiently productive to yield revenue for the two Governments, Article VII, as originally prepared, reserves for consideration after that the development should be made the proceedings to be adopted for the division of those profits.

3. The commissioners propose (1) a stipulation that the annual expense of the undertaking shall in no case exceed thirty per cent of the annual proceeds without the consent of both contracting parties; (2) that the net proceeds of the undertaking corresponding to the United States of America shall be preferentially applied from the first year to the reimbursement of the capital invested; and (3) that to determine the net proceeds of the undertaking no deduction shall be made for interest on the capital invested in the work, nor for the amount destined as a reserve for the sinking fund.

Upon careful inquiry, I am satisfied that the restrictions thus proposed would defeat a subscription of the necessary capital for the construction of the work.

On the subject of this article generally, I may be excused for saying that the United States of America have been able to secure the undertaking of the Pacific Railway, now in such prosperous progress, through the territory of the United States only by allowing to capitalists guarantees more liberal and promises of reward more munificent than those which are stipulated in this Article VII, as now invested upon, with a view to the construction of a ship canal by capitalists of the United States in a foreign and distant country.

Article VIII.

The United States of Colombia shall retain their political sovereignty and jurisdiction over the canal and the territory pertaining thereto, but they shall not only allow, but guarantee, according to the constitution and laws of Colombia, the peaceable enjoyment, control, direction, and management of the same, as before specified.

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EXPLANATIONS.

The amendments proposed by the Colombian ministers to Article VIII seem reasonable, and are accepted.

ARTICLE IX.

The United States of America and the United States of Colombia shall have right to use the canal for the transportation of troops and munitions of war, but no other nation shall have such right without the consent of the two contracting parties, and in case of war, in which neither the United States of America nor the United States of Colombia shall be parties, the canal shall be neutral to all other nations.

EXPLANATIONS.

The projected treaty comes back with the words, "rejected by Colombia," written opposite this Article IX. No explanation for the rejection has been communicated.

By expunging that article the treaty would leave the proposed ship canal to become a common military road for the transportation of armies, and of military and naval munitions, by all belligerents of whatever nation they might be.

If it may be supposed, by way of illustration, that Great Britain and France are belligerents in the East, or that China in the East and Great Britain in the West, or that Austria and Prussia, or that Spain and the South American Republics, or that Russia and Japan should become belligerents, and that there might not only be one war between some of those parties at one time, but half a dozen wars prosecuted among so many belligerents at the same time. In that case, according to the view of the Colombian convention, not only one of those belligerents, but both the parties engaged in one actual war, and, indeed, all the parties engaged in *all* the conflicts concurring at the same time would have a right to use the Darien ship canal as a military road.

Is it to be supposed that those belligerents, in the heat of conflict, would conform themselves to the regulations which the United States of America might establish for the use of the canal, or would submit themselves to the laws and police of the United States of Colombia in the use of it for such hostile and probably fatal purposes?

One of the two belligerents might think it would gain an advantage over its enemy by burning the ships that were carrying munitions and troops through the canal; another, or a confederacy of others, might think it would be advantageous to their cause to destroy the canal itself. Is Colombia able and willing to guarantee to the United States of America the maintenance of the neutrality which she thus proposes to all belligerents?

What inducements does Colombia offer to the United States of America to give such guarantee on their part?

Even though one of the belligerents should be at war with Colombia itself, the Darien Ship Canal must nevertheless be neutral.

The armed enemy of Colombia must be allowed to introduce his armies through the terminal ports and the canal to the very capital of Colombia, and to substitute itself in the place of Colombia as depositary of the key which unlocks the American continent to the ambition of foreign powers.

The United States of America have less reason, perhaps, than any other nation has now or ever has had to desire, fear, or expect to be

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engaged in war with any foreign State; but can the Republic of Colombia expect, in the event the European States should attempt singly or by confederacy to overthrow republican institutions and to restore by force imperial or despotic power in the American continent, that in such a case the United States of America would allow a public enemy of the American continent the use and advantage of a work constructed by two American nations? Even if the two nations were to be so shortsighted as to leave such advantages open to an enemy of either or both nations, the capitalists of any country who should be invited to engage in constructing a canal would instinctively decline to grant the solicited investment. Article IX, as originally submitted, carefully consults the sovereignty, integrity, and safety of the United States of Colombia, while in case of war it saves all necessary advantages to both countries.

The Secretary sincerely hopes the Colombian ministers will reconsider their rejection and accept the article.

ARTICLE X.

Colombia shall impose no tolls or duties of any kind on vessels, passengers, money, merchandise, and other objects which may be conveyed through the canal from one ocean to another, but such effects as may be destined for home consumption or trade in Colombia, shall be liable to such duties as are or may be established.

EXPLANATION.

The amendments proposed by the Colombian ministers are accepted.

ARTICLE XI.

Notwithstanding what is before said of guarantee, if a military or naval force shall be at any time found necessary to maintain the protection and service of the canal, it shall be maintained at the equal expense of the contracting parties.

Either party failing to contribute its proportion of such force shall indemnify the other for excess of force and expenditure.

EXPLANATION.

The Colombian ministers have raised no objections to this article, and it stands as originally drawn.

ARTICLE XII.

The neutral rights and privileges hereinbefore specified shall continue for the period of one hundred years after the canal shall have been brought into operation, at the end of which time the canal and its appendages and appurtenances shall revert to the United States of Colombia, on their paying to the United States of America an amount equal to the original cost of the survey, location, and construction of the canal and expenditures for the same, deducting any net profits that shall have been received by the United States of America exceeding an interest of ten per cent.

EXPLANATION.

We have carefully considered the amendments proposed by the Colombian ministers and are of opinion that they could not prudently be accepted. The whole article is rather visionary than practical.

The reversion of the canal to the United States of Colombia is delayed an hundred years. No one now living can foresee the financial, political, and social condition which will exist in the two countries at that distant period. Indeed, it is very probable that such changes may

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occur in both countries that the parties will, by common consent, agree more than once to modify the agreements now made long before the period assigned.

It may be foreseen that such modifications will be desired by the Republic of Colombia if it shall go on increasing in resources, population, and strength, as it is to be hoped it may. The terms of revision mentioned in Article XII were fixed in anticipation of some such early reconstruction of the agreements, rather than with a view of their being insisted on only at the end of one hundred years. What seems conclusive upon the subject is that capitalists could not be expected to invest funds in such an enterprise with a condition of a future surrender of their property in the canal unless they had reason to expect that they should be allowed by the Government to realize 10 per cent upon their investments if they shall find it possible.

Article XIII.

The United States of America may by law devolve all its rights, franchises, and duties, property and obligations touching survey, construction, or preservation of the proposed canal herein contained upon any individual citizen or incorporated associations of citizens of the United States, and in that case such citizen or citizens shall enjoy all the rights of property and privileges, and be subject to all the obligations and engagements herein contained, and they shall always be subject to the control and direction of the United States of America as declared by law. But the political obligations herein assumed by the United States of America and the United States of Colombia are permanent and indefeasible.

EXPLANATIONS.

We feel obliged to disallow the amendments proposed by the Colombian ministers, and to insist upon the article as it was originally written.

1. The amendments of the Colombian commissioners are supposed to have arisen under a very natural misapprehension of facts and circumstances. The commissioners seem to suppose that the United States of America stand not only well disposed but fully prepared and impatient to commence, prosecute, and complete the projected ship canal by a direct application of executive and administrative powers and faculties. It must have been this belief on the part of the Colombian ministers which induced them to propose that the United States of America shall not at all devolve the construction of the canal upon any private company, and that the care and conduct of the canal itself shall not be devolved upon any such company until the canal shall have been fully constructed and brought into operation. It is supposed that the commissioners persisted under the same belief in prescribing contingent forfeitures of the rights of the anticipated company. Frankness on the part of the United States requires me to say that in regard to these important points the Colombian ministers are acting under a grave misapprehension. The territory of the United States is full of canals and railroads and other works of material improvement. The length of canals in this country is measured by thousands of miles, the length of our railroads by tens of thousands of miles. Nevertheless there is not, and there never was, within the territory of the United States of America one mile of railroad or canal which was directly constructed by the Government of the United States of America, or over which the United States of America exercises directly rights of property or control.

The United States construct only fortifications and other works of

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military strategy or defense, and navy-yards, light-houses, custom-houses, and the like. Every work of internal improvement in the United States has been made either by States or by corporate companies or by private individuals. What the Government of the United States do and always do in regard to such works of internal improvement is to accept or sanction such enterprises when undertaken by the various States or by corporate bodies or by private individuals, and lend them aid by way of compensation or loan or protection, with other practical encouragement. The Government of Colombia is familiarly acquainted with the Panama Railroad, which was made and is owned by a corporate company of the United States of America, and enjoys only the recognition, sanction, and protection of the Government of the United States.

Even the Pacific Railroad, which, although incomplete, nevertheless stretches near halfway across the continent at its widest part, was begun and has been thus far prosecuted, and will be prosecuted to the end, by corporate companies so encouraged and patronized by the Government.

Precisely the same course of proceeding is contemplated by the present convention in regard to the Darien Ship Canal. It is believed that no other mode of proceeding in regard to the construction of the proposed canal could secure the assent or approbation of the Congress of the United States. It would be easy to show that this indirect mode of proceeding would tend greatly to the security and advantage of the United States of Colombia. Private citizens of the United States and corporate companies created under their laws may be expected to be held by proper obligations to respect and obedience of the laws and authority of the United States of Colombia. On the other hand, I am unable to conceive of any proceeding that could be more perilous to the United States of Colombia than that one should allow a stronger Government like that of the United States to become directly the proprietor or conductor of a ship canal with free ports at its termini on the two oceans.

If, contrary to these views of the case, the Colombian Government shall continue to regard with disfavor the construction of the canal by a company or associations under the laws of the United States, and with their sanction, then the present negotiation may be immediately brought to an end.

I trust, however, that the practical view which I have suggested will be accepted by the United States of Colombia, and that they will not insist upon their proposed amendment, which denies to the United States Government the privilege of devolving the work of constructing the canal upon individuals or upon a corporated company.

2. This explanation having been made, it is not thought unlikely that the Colombian Government will assume that already some private individuals in the United States have organized themselves into an association, or that such individuals are now standing ready and eager to accept the powers and privileges which are to be stipulated in the present treaty and to engage with the necessary capital in the construction of the Darien Ship Canal. If this expectation has been or shall be formed it should be dissipated promptly.

Engineers the best qualified and informed estimate the cost of constructing the Darien Ship Canal at one hundred millions of dollars in gold, and they calculate that it involves a sacrifice by pestilence and

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other forms of accidents of twenty-five thousand lives. No citizen of the United States of America, capitalist or otherwise, has moved or can be moved to engage in the vast enterprise except as he is influenced by the political, moral, and social considerations which have inspired the proceedings of the Executive Department of the United States in the present negotiation.

The Executive Department believes, and thinks it has reason to believe, that were adequate inducements offered by the two countries a corporate association could be formed, competent to the enterprise, and called into activity; but the entire proceeding is experimental.

No corporation will come forward and no capital will be subscribed unless such inducements and guarantees as have been suggested shall be furnished by the two Governments.

The assessments, charges, penalties, and forfeitures which the Colombian ministers propose would alarm and effectively deter capitalists from accepting the invitation which the projected treaty, as drawn up by me, is intended to hold out to them.

It is not supposed that the great achievement contemplated can be effected without immediate cost and expense and sacrifice to be incurred by both nations. The amount of accumulated capital in the markets of the world is too small, and the field for its employment is relatively too large, to justify an expectation that one hundred million dollars would be voluntarily and impetuously poured into the treasuries of either of the two Governments, or both of them, or of any corporate body that shall avow itself willing to undertake the work. Entertaining these views, I am of opinion that the stipulations proposed in the amendments of the commissioners to Article XIII are impracticable and must be disallowed.

Article XIV.

Such citizen or citizens shall likewise hold their property, rights, immunities, and privileges in and about the same ship canal, subject to the authority of the Congress of the United States, and subject in like manner to the reservation herein contained in favor of the United States of Colombia.

EXPLANATION.

This article has been rejected by the Colombian ministers. It is insisted upon by the United States. Reasons for the persistence will easily be inferred from the explanation which has been communicated under the head of Article XIII.

It is proper, however, to further say that the effect of Article XIV would be to secure to such corporate company as should be authorized by the United States to prosecute and operate the Darien Ship Canal just the same powers, and no others, than those which the draft of the treaty saves to the United States of America, and subjects such company to all the obligations and duties which the treaty proposed to devolve upon the Government of the United States, in case that Government should undertake to construct and operate the canal directly.

Article XV.

This treaty shall cease and determine if the United States of America shall not make or cause to be made the surveys and locations of the canal herein provided for within three years after the ratification and exchange of this convention, or if they shall fail to begin the construction of the canal or cause it to be begun within five years after such ratification, or if they shall fail to cause it to be completed within a period of fifteen years after such ratification.

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EXPLANATION.

The Colombian commissioners accept this article.

ARTICLE XVI.

If, unhappily, any difference shall arise between the United States of America and the United States of Colombia growing out of this treaty, or out of the survey, location, construction, use, management, or revenues of the projected ship canal, the parties mutually engage not to resort to war on that account, but to refer all such difficulties and controversies to the arbitrament of some foreign nation which shall be impartial between the contracting parties, and which shall be favorable to the advancement of commerce, peace, and civilization throughout the world.

EXPLANATION.

We would prefer to insist upon Article XVI, here recited. It seems that the present is a suitable and convenient time for the two American nations to negotiate a treaty to manifest their confidence in the stability and wisdom of the republican system of government on the American continent. If, however, the Colombian commissioners shall persist in their proposed amendments the minister of the United States of America is at liberty to concede them.

ARTICLE XVII.

The Colombian ministers propose to amend this article by substituting one which declares that the convention shall not take effect until it shall have been approved by the Congresses of both contracting nations, and exchanged in due form.

I propose to amend the amendment of the Colombian commissioner by substituting in place of the original article a new article as follows:

ARTICLE XVII.

In consideration of the constitutions of the two nations, and of the magnitude and weight of the matters contained in this convention, it is declared that it shall not take effect, except as to the provisional surveys, until laws approving the convention shall have been passed by the respective Congresses of the United States of America and the United States of Colombia, and exchanged in due form, and that the provision for survey may take effect from the time when laws have been passed approving of the convention by the Congress of the United States of Colombia, and when the convention shall have been duly ratified by the President, by and with the consent of the Senate, of the United States of America.

EXPLANATION.

A reliable preliminary survey of the Darien Ship Canal is an object most desirable to be accomplished, even if the provisions contained in this treaty for constructing the canal are unattainable.

The Congress of the United States have already appropriated sufficient funds and conferred on the President the power to make such a survey; so that no further action on that subject by the Congress of the United States is deemed necessary.

All that is required with regard to the survey is, that the consent of the United States of Colombia shall be given to that survey. While I think it would be unfortunate to lose the survey proposed in this amendment, I still leave the execution of that preliminary work to the full and free consent of the Congress of the United States of Colombia.

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ARTICLE XVIII.

The present convention shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by the President of the United States of Colombia, with the consent and approbation of the Congress of the same; and the ratifications shall be exchanged in the city of ———, within twelve months from the date of the signatures of this convention.

EXPLANATION.

The Colombian ministers assent to this article.

I am, &c.,

WILLIAM H. SEWARD.

3.—[Confidential.—Executive, LL. 40th Congress, 3d session.]

Message of the President of the United States, transmitting a convention of the United States of America and the United States of Colombia, relating to the construction of a ship-canal between the Atlantic and Pacific oceans, concluded at Bogota the 14th January, 1869.

FEBRUARY 16, 1869.—Read; convention read the first time, referred to Committee on Foreign Relations, and, with the message, ordered to be printed in confidence for the use of the Senate.

To the Senate of the United States:

I transmit for the consideration of the Senate, with a view to ratification, a convention between the United States of America and the United States of Colombia, for facilitating and securing the construction of a ship canal between the Atlantic and Pacific Oceans, through the continental isthmus lying within the jurisdiction of the United States of Colombia, which instrument was signed at Bogota on the 14th ultimo.

ANDREW JOHNSON.

WASHINGTON, *February 15, 1869.*

Convention between the United States of America and the United States of Colombia, relating to the construction of a ship canal between the Atlantic and Pacific Oceans, concluded at Bogota the 14th January, 1869.

Whereas, the construction of a ship-canal between the Atlantic and Pacific Oceans, through the continental isthmus which lies within the jurisdiction of the United States of Colombia is essential to the prosperity and welfare of the United States of America and the United States of Colombia, as well as to the interest of commerce and civilization throughout the world; now, therefore, the United States of America and the United States of Colombia have agreed to enter into a convention for the purpose of facilitating and ultimately securing that great object, and with that view have appointed their plenipotentiaries, namely: the President of the United States of America, Peter J. Sullivan, minister resident of the United States to the United States of Colombia; and the President of the United States of Colombia, Miguel Samper, secretary of finance and internal improvement of the Colombian union, and Tomas Cuenca; and the said plenipotentiaries, having exchanged their full powers in due form, have agreed upon the following articles:

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ARTICLE I.

The United States of Colombia agree and consent that the United States of America shall make, and the United States of America agree to make the necessary survey for such ship-canal; and, if they ascertain the same to be feasible, then to locate the same, together with all its necessary appendages and appurtenances of locks, ports, harbors, stations, supply-feeders, and sluices, &c., on land and sea, upon the domain and within the jurisdiction of the United States of Colombia; and to adopt a plan of construction, and to make a thorough and detailed estimate of the expense and cost of construction; and for that purpose the United States of America may employ proper civil and military superintendents, engineers, accountants, and other agents and laborers, ships of war and transports, the military force, however, not to exceed, at any time, 500 rank and file without express consent of the United States of Colombia first obtained; and all persons engaged in such service, whether civil, naval, or military, shall, while so engaged, render lawful submission and obedience to the civil authorities of Colombia.

When the survey and location shall be completed the President of the United States of America shall certify the same, with the necessary maps and descriptions to the President of the United States of Colombia, and the same surveys, locations and descriptions shall be filed in the archives of the two Governments.

The route and plan thus fixed may afterwards be varied, as occasion shall require, under the authority of the United States of America, due notice being given of such modifications to the United States of Colombia. Said canal shall in no case be constructed on or across the route of the Panama Railroad, unless the company's consent has been first obtained.

ARTICLE II.

The United States of Colombia agree to concede, set apart, appropriate, and devote to the purposes of such ship-canal all the territory, including land, ocean, and tributary waters, which shall be designated for the purpose thereof in such plan and may be found necessary, and besides ten miles of waste, unsettled, and unimproved lands on each side of the canal throughout its entire length, and all the materials for such construction found within the territory so to be conceded; private owners of property being entitled to have a just and reasonable indemnity, to the effect whereof the Government of Colombia shall order the expropriations to be made according to its laws; but the valuation thereof, in no case, to be enhanced by reason of the proposed or actual construction of the canal.

The ten miles of land granted on each side of the canal shall be measured and divided into equal lots, the front whereof, bordering on the canal or its appendages, shall not exceed three thousand three hundred yards. Said lots shall be equally distributed between the two Governments, so that neither of them shall have two contiguous or consecutive lots, nor the two first at either extremity of the canal, both Governments being able to dispose freely of their corresponding lots, but with the condition that they shall allow free passage thereby to and from the canal and its appendages. To begin the distribution the Government of the United States of America shall choose its first lot,

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and at the expiration of the term of this treaty shall give back to the Colombian Government, without exacting any amount for improvements made thereon, nor for any other reason whatever, all such lots or portions thereof which may not have been disposed of in favor of private individuals.

Article III.

The United States of Colombia stipulate and agree not to undertake or allow the opening of any other interoceanic canal or of any new railway through or across their territory from the Atlantic to the Pacific Ocean without the express consent of the United States of America being first obtained.

Article IV.

The outlay, cost, and expense of the survey, location, construction, and equipment of the said canal and its ports, stations, depots, and harbors, including damages paid for private property and the indemnity that may correspond to the Panama Railroad Company, should the case arise, in accordance with the contract celebrated by the Colombian Government and approved by Congress on the 15th of August, 1867, shall be for the account of the United States of America, but exclusively with reference to the purposes of this convention. The objects destined in Article II by the United States of Colombia for the construction of the canal shall remain in charge of the United States of America, but exclusively for the purposes of this convention.

Article V.

The United States of America shall construct said canal, with its appurtenances, suitable for the passage of all kinds of vessels, and may employ the necessary force of skill, art, and labor for that purpose. They may also maintain the necessary naval and military force, which shall at no time exceed 1,000 men, without the express consent of the United States of Colombia being first obtained; as soon as the canal be brought into operation, said force shall be withdrawn by the Government of the United States of America, if it be so requested by the Government of the United States of Colombia. The United States of America engage that the employés, laborers, artificers, as well as the naval and military force so engaged, shall conform themselves to the laws and Government of the United States of Colombia.

Article VI.

As fast as the canal and its appendages and appurtenances shall be constructed, the control, possession, direction, and government of the same shall belong to, and be exercised by, the United States of America, the Government of the United States of Colombia at the same time being at liberty, after the exchange of this convention, to maintain a permanent committee of agents, with the full right to inspect the operations concerned, measure the tonnage of vessels, examine the books and accounts, and report thereupon to the Government of the United States of Colombia; but not to interfere with the survey, control, management, direction, and working of the canal.

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Article VII.

The Government of the United States of America shall establish a tariff of tolls and freights for the said canal on a basis of perfect equality for all nations, whether in time of peace or war. The proceeds of the canal shall be preferently applied to the reimbursement of the expenses incurred in the management, service, and government of the same, and to the reimbursement of the capital invested in its survey, location, and construction, including in the cost of construction the indemnities to be paid for private property, and that which may correspond to the Panama Railroad Company, should the case arrive, according to the contract entered into by the Colombian Government with said company.

Twelve years after the canal be brought into operation the Government of Colombia shall be entitled to an annual 10 per cent. of the net proceeds of the undertaking; and as soon as the Government of the United States of America shall have been reimbursed of the capital invested in the undertaking, up to the time when it be brought into operation, such proportion shall be of 25 per cent. of the said net proceeds, even if the reimbursement takes place within the first twelve years. The payment of the portion corresponding to Colombia, above mentioned, shall be made semi-annually in the city of New York.

For the purposes of this article it is stipulated: first, that the annual expenses of the undertaking shall in no case exceed 30 per cent. of its annual proceeds, unless the express consent of both contracting parties has been first obtained; second, that the net proceeds of the undertaking, corresponding to the Government of the United States of America, shall be preferently applied, from the first year of its being brought into operation, to the reimbursement of the capital; and third, that in order to liquidate the net proceeds of the undertaking no deduction whatever shall be made for interest of capital invested therein, nor for the amount set apart as a reserved or sinking fund.

Article VIII.

The United States of Colombia shall retain their political sovereignty and jurisdiction over the canal and territory appertaining thereto; but they shall not only allow but guarantee to the United States of America, according to the constitution and laws of Colombia, now in force, the peaceable enjoyment, control, direction, and management of the same, as before specified.

Article IX.

The United States of America shall have right to use the canal for the passage of troops, munitions and vessels of war, in time of peace. The entrance to the canal shall be rigorously closed to the troops of nations which are at war with another or others, including their vessels and munitions of war.

Article X.

Colombia shall not impose tolls or duties of any kind on vessels, passengers, money, merchandise, and other objects conveyed through the canal from one ocean to the other. But such effects as may be destined to be sold or consumed in the interior of Colombia shall be liable to the duties and taxes that are or may be established.

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Article XI.

Should a naval or military force be required for the protection or defense of the canal, and the Government of the United States of America agree to furnish the same, said force shall, for the object expressed, and during the time it may be needed, act under the concurrent orders of the two governments, and be paid from the proceeds of the canal.

Article XII.

The mutual rights and privileges hereinbefore specified shall continue for the term of one hundred years, reckoned from the day on which the canal be brought into operation; at the end of which time the Government of Colombia shall enter into the possession, property, and enjoyment of the canal and lands appertaining thereto, wharves, stores, and all other appendages of the undertaking built at the extremities or along the canal, without being thereby obliged to pay indemnity of any kind whatever; the United States of America being entitled to retain whatever sums they may have received during the one hundred years herein mentioned.

Article XIII.

The United States of America may, by law, devolve all their rights, franchises, duties, property, and obligations, touching survey, construction, and preservation of said canal, upon any individual citizen or association of citizens of the United States of Ameriea; and in that case such citizen or association shall enjoy all the rights, property, and privileges, and be subject to all the obligations and engagements herein contained on the part of the United States of America. The differences which may arise between such citizen or association and the United States of Colombia as to the interpretation or fulfillment of the several clauses of this treaty shall be decided by a tribunal formed in the following manner: each party shall appoint a commissioner, and these two commissioners shall appoint an umpire who shall decide those cases in which the two former cannot agree. This tribunal shall hold its sessions in Bogota, and neither party shall have recourse against its decisions. In case one of the parties be required to appoint its commisioner and should not do it within the thirty days following, or should appoint a person who cannot or will not accept the appointment, then this appointment shall be made by the Government of the United States of America. The expenses of this tribunal shall be taken from the gross proceeds of the canal, as soon as it be brought into operation; and before this takes place, such expenses shall be to the equal charge of both parties, but to be deducted from the first proceeds of the canal. In case the commissioners do not agree as to the appointment of the umpire, then the two contracting governments shall submit their differences to the arbitrament of some other friendly government in the manner stipulated in Article XVII.

The political obligations herein assumed by the United States of America and the United States of Colombia are permanent and indefeasible.

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Article XIV.

Such citizen or association shall hold their property, rights, immunities, and privileges in and about the same ship canal, subject in like manner to the reservations herein contained in favor of the United States of Colombia.

Article XV.

In case the Government of the United States of America should devolve the undertaking, as mentioned in Article XIII, the privilege shall be forfeited, and the Government of Colombia enter into the possession and gratuitous enjoyment of the canal and its appendages in the following cases: First. If such citizen or association should transfer or underlet the enterprise in favor of any foreign government. Second. If such citizen or association should co-operate in any rebellious act against the Government of the United States of Colombia tending to the withdrawal from the dominion of said government of the territory wherein the canal may be constructed; and Third. If, after the canal be constructed and brought into operation, the passage through the same be suspended for more than three years, save unforeseen cases or superior force beyond the control of said citizen or association. It is understood that the enumerated cases of forfeiture are comprehended in the matters of which the tribunal provided for in Article XIII has jurisdiction, and shall be judged by it both as to fact and law.

Article XVI.

This treaty shall cease and determine if the United States of America shall not make, or cause to be made, the surveys and locations of the canal herein provided for, within three years after the ratification and exchange of this convention, or if they shall fail to begin the construction of the canal, or cause to be begun within five years after such ratification, or if they shall fail to cause it be completed within a period of fifteen years after such ratification.

Article XVII.

If, unhappily, any difference should arise between the United States of America and the United States of Colombia, growing out of this treaty, such difference shall be submitted to the arbitrament of some impartial government, whose decisions shall be, in every case, duly respected and fulfilled.

Article XVIII.

The United States of America and the United States of Colombia mutually agree to second the efforts of each other in procuring the friendship and guarantee of all other nations in favor of the stipulations of neutrality mentioned in Articles VII and IX, as well as the sovereignty of the United States of Colombia over the territory of the isthmus of Panama and Darien.

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ARTICLE XII.

The present convention shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by the President of the United States of Colombia, with the consent and approbation of the Congress of the same; and the ratification shall be exchanged in the city of Bogota within twenty months from the date of the signature of this convention.

In faith whereof, we, the plenipotentiaries of the United States of America, and of the United States of Colombia, have signed and sealed these presents, in the city of Bogota, on the fourteenth of January, one thousand eight hundred and sixty-nine.

[SEAL.] PETER J. SULLIVAN,
Minister Resident and Plenipotentiary of the United States of America.

[SEAL.] MIGUEL SAMPER,
TOMAS NUENCA,
Plenipotentiaries of the United States of Colombia.

4.—[Confidential.—Executive, Q.—41st Congress, 2d session.]

Message of the President of the United States transmitting a treaty between the United States and the United States of Colombia, for the construction of an interoceanic canal across the Isthmus of Panama, or Darien, signed the 26th January, 1870.

APRIL 1, 1870.—Read; treaty read first time, referred to the Committee on Foreign Relations, and, with the message and accompanying document, ordered to be printed in confidence for the use of the Senate.

To the Senate of the United States:

I transmit for consideration, with a view to its ratification, a treaty between the United States and the United States of Colombia, for the construction of an interoceanic canal across the Isthmus of Panama, or Darien, signed at Bogota on the 26th of January last.

A copy of a dispatch of the 1st ultimo to the Secretary of State from General Hurlbut, the United States minister at Bogota, relative to the treaty, is also transmitted for the information of the Senate.

U. S. GRANT.

WASHINGTON, *March 31, 1870.*

A treaty for the construction and regulation of an interoceanic canal across the Isthmus of Panama, or Darien.

Whereas the construction of a canal between the Atlantic and Pacific Oceans, across the Isthmus, uniting the two Americas, situated within the jurisdiction of the United States of Colombia, is essential to the prosperity and well-being both of the United States of America and of the United States of Colombia, as well as to the commercial interests and civilization of the world: Therefore, the United States of America and the United States of Colombia have agreed to enter into

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a treaty, for the purpose of facilitating and securing the great objects above expressed, and for that purpose have appointed their respective plenipotentiaries; that is to say, the President of the United States of America has appointed Stephen A. Hurlbut, minister resident of the United States of America, within the United States of Colombia; and the President of the United States of Colombia has appointed Justo Arosemena and Jacobo Sanchez, who, having first exchanged their respective powers in due form, have agreed upon the following articles:

Article I.

The United States of Colombia consent and agree that the United States of America shall make, or cause to be made, the necessary explorations to determine the practicability of such canal, and the United States of America agree to make such explorations, and, if the work shall be found practicable, to cause the same to be surveyed and laid out, with all its dependencies, accessories, and appurtenances, and other constructions of every sort, necessary to the successful use of the same, either on the land or in the water, within the jurisdiction of the United States of Colombia, and to adopt a plan of construction, and to make full and detailed estimates of the same; and for such purposes to employ and use within the territorial limits of the United States of Colombia all and any civil or military officers, agents, employés, and workmen, and also such vessels of war and transports as may be necessary.

The land forces, however, shall not exceed five hundred men, without first having obtained the express consent of the United States of Colombia. All persons employed in such service, whether military or civil, while within the jurisdiction of the United States of Colombia, shall observe the existing laws of that country.

Article II.

As soon as the detailed surveys shall have been completed, and the line of the canal established, the President of the United States of America shall certify the same to the President of the United States of Colombia, and shall also forward duplicates of the maps, plans, and accompanying descriptions; and such maps, plans, and descriptions shall be deposited in the archives of both Governments.

The route selected and the plans proposed may afterwards be varied, if required by the United States of America, of which variation the Government of Colombia shall be at once fully informed.

It is, however, expressly provided that said canal shall not be constructed on the route of the Panama Railroad without first obtaining the consent of the company owning said railroad.

Article III.

Nothing contained in the two preceding articles shall be understood to mean that the United States of Colombia will forbid other explorations within her territories which may be undertaken for the same purpose of determining the practicability of an interoceanic canal, but only that they will decline to make any concession whatever for the excavation of such canal to any except to the United States of America, until the latter party shall have declared that they consider the work

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impracticable, or the term of three years, expressed in Article XXIV, shall have expired without the United States of America having declared their determination to commence the work.

ARTICLE IV.

The United States of Colombia agree to grant, set apart, and secure for the work of the canal and its dependencies and appurtenances all the territory, including sea and tributary waters, which may be selected for this object and shall be necessary; and also grant the power to the United States of America to take any lands owned by private individuals which it may become necessary to condemn, yet making full compensation therefor, and following the course prescribed by the laws. But in determining the amount of indemnity the enhanced value which may accrue to said lands thus condemned, by reason of the opening of the canal, shall not be taken into account.

ARTICLE V.

The United States of Colombia also grant in aid of the projected work, and in favor of the enterprise, two hundred thousand hectares, that is to say, four hundred and ninety-four thousand two hundred and twenty acres, of the unappropriated lands of the nation, which may be found uninhabited and uncultivated, which lands the United States of America may designate wherever they may be found within the limits of the State through whose territory the canal shall be opened.

The national vacant lands which may be found bounding on either bank of the canal shall be surveyed and divided into lots of equal dimensions, whose front on the canal shall not exceed three kilometers—that is to say, three thousand two hundred and eighty yards and eight hundred and ninety-nine one-thousandths of a yard—every alternate lot of which is reserved for the United States of Colombia. The said lots shall be equally divided between the two contracting parties in such a manner that neither shall hold contiguous lots, nor either the two first lots at either extremity of the canal. Either Government shall have the full power of free disposal of the lots which may be assigned to it, but always subject to the right of way for the canal and its appurtenances. The Government of the United States of America shall have the right to select the first lot to commence the division. All the lands hereby granted which shall not have been sold to private individuals or retained as necessary for the canal, at the end of twenty years from the completion of the work, shall become the absolute property of the United States of Colombia, without any claim for improvements or for any other cause. The national vacant lands comprised in the belt of country in which the canal may be opened are hereby granted in preference to all other claimants for the object of this treaty, and the Government of the United States of Colombia binds itself to abstain from making any adjudications of such lands in any place where the canal may possibly be made, until the selection provided for in this article shall have been made.

ARTICLE VI.

While the present treaty remains in force the United States of Colombia bind themselves not to open, or permit to be opened, any

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other interoceanic canal, nor any other railroad, across their territory from the Atlantic Ocean to the Pacific Ocean, without having first obtained the express assent of the United States of America.

Article VII.

The entire expenditure which may be incurred in the exploration, surveying, construction, and maintenance of the projected canal, together with its ports, locks, harbors, bays, warehouses, wharves, docks, and in general all the dependencies and appurtenances necessary for the use of said canal, including also such compensation as may be required to be paid for private property, and also the compensation which may become due to the Panama Railroad Company (if the event occur), in conformity with the contract entered into with said company by the Government of Colombia and approved by the Congress on the fifteenth of August, anno Domini eighteen hundred and sixty-seven, shall be payable and paid by the United States of America. The grants contained in the fourth and fifth articles of this treaty shall remain in favor of the United States of America, but solely for the purposes of this treaty.

Article VIII.

The United States of America shall construct or cause to be constructed said projected canal (if found practicable), together with its appurtenances, so that it may be adapted for the passage of vessels of all classes not exceeding five thousand tons, and may employ such superintendents, engineers, mechanics, artisans, and laborers or other employés as may be necessary for the purpose. They may also maintain the naval and military force in their judgment necessary for protection, the latter of which shall at no time exceed the number of one thousand men without first obtaining the express consent of the United States of Colombia. The said force shall be withdrawn by the United States of America as soon as the canal is prepared for service, if the Government of Colombia shall so request. The United States of America agree that the superintendents, engineers, mechanics, artisans, laborers, and other employés, as well as the naval and military forces destined to protect the work, shall observe the then existing laws of the United States of Colombia.

If the United States of America shall prefer that any portion of the land forces employed for the protection of the work should be furnished by the United States of Colombia, it shall be so done upon the request of the Government of the United States of America, but the pay and support of said troops so furnished shall be at the expense of the enterprise, according to the then existing rates allowed to similar troops by the laws of Colombia.

Article IX.

The United States of America shall have power to erect and maintain yards and docks for the repair and supply of their ships at the harbors at each end of the canal, and to maintain within the limits of such yards and docks a sufficient police force to protect the public property within the same, not exceeding, however, two hundred men, without the express consent of the Government of Colombia.

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Article X.

As soon as the canal, its dependencies and appurtenances, shall be completed, the entire possession, inspection, direction, and management of the same shall appertain to the United States of America, and shall be exercised by them without any interference from any source, but without any right of jurisdiction over the territory or its inhabitants. The United States of Colombia shall retain their political sovereignty and jurisdiction over the canal and adjacent territory, but will not only permit, but do hereby guarantee to, the United States of America, in conformity with the constitution and laws of Colombia, the peaceable and undisturbed enjoyment, administration, direction, and management of the canal, as already stated. But this guarantee in no respect differs from that which is conceded by the laws of Colombia to all persons and all interests within its territory, and if the enterprise of the canal shall require any extraordinary public force in order to obtain more complete security, it will be furnished when requested, but at the expense of the enterprise.

Article XI.

The United States of America on their part guarantee to the Government of Colombia that the canal, its dependencies and appurtenances, shall be free and exempt from all hostile acts on the part of any other nation or foreign power, and for these purposes the United States of America constitute themselves an ally of the United States of Colombia to aid in repelling any attack or invasion upon the properties, rights, and privileges above guaranteed—it being well understood that such expenses as may thus be incurred by the United States of America shall be solely discharged by that power; and, also, that the United States of Colombia will defend the said canal and its dependencies as part of her territory to the extent of her ability. Both the parties contracting in this treaty reserve to themselves the right of passing their ships of war, troops, and munitions of war through the canal at all times, free of all charge, impost, or duty; but the said canal shall be closed against the flag of all nations which may be at war with either of the contracting parties. No troops shall be allowed to pass through the canal with arms in their hands, except those of the United States of Colombia moving under constitutional authority, and those vessels of war of nations at peace with both contracting parties. With the exceptions herein named, the canal shall be open for the use of all nations and every kind of lawful business without distinction.

Article XII.

The United States of America shall have power to establish, and from time to time to change and alter, a tariff of charges on merchant vessels, loaded or unloaded, and upon vessels of war of other nations than the United States of America and the United States of Colombia, passing through the canal, according to the tonnage of such vessels, and upon the basis of perfect equality at all times and among all nations, with no other distinctions than are contained in the preceding article. The tonnage of such vessels shall be determined according to the rules for ascertaining tonnage declared by the laws of the United States of America.

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The United States of Colombia shall receive as their proportion of such tonnage duty or impost a fraction of a dollar for every ton which the vessels passing through the canal may measure, excepting vessels employed in the service of the canal and the vessels of war of the United States of America and of the United States of Colombia, in manner following: that is to say, ten cents for each ton during the first ten years after the canal shall have been opened for business, and five cents additional for every five years thereafter until the maximum of forty cents per ton shall be reached; provided, however, that at no time shall the said proportion belonging to the United States of Colombia exceed ten per centum of the tonnage duty or impost levied for the benefit of the canal on each ton passing through the same.

The United States of America shall also have power to fix, and from time to time to change and alter, the rates of transportation for passengers through the said canal; and the United States of Colombia shall receive as their share of the same the sum of two dollars for every cabin passenger and one dollar for every steerage passenger transported through said canal. The specific amounts above set forth as the proportional share of the United States of Colombia shall be paid at such times and in such form as may be directed by the Government of Colombia upon reasonable notice, the said Government hereby reserving to itself the right to establish and maintain proper officers on the line of said canal with sufficient authority to collect from the management of the enterprise the above-mentioned specific imposts, but without any interference in the management of the canal.

Article XIII.

The United States of America shall also have power to establish, and from time to time to change and alter, a tariff of charges upon cargoes and freights of vessels passing or to pass through the canal; and also for the use of docks, wharves, warehouses, harbors, and other works incidental to the use of the canal.

The said tariff upon cargoes shall be estimated ad valorem; that is to say, upon the value of the goods and merchandise at the port of shipment, and at the same rate or proportion of value for every class of merchandise, and equal among all nations; and if the value at the port of shipment cannot be fairly ascertained, or there be no port of shipment, then on the fair value of the same at the mouth of the said canal. Special rates may, however, be charged on gold, silver, platina, and precious stones; but no distinction shall be made in favor of any nation nor against any other.

The mails and correspondence of all countries shall pass through the canal without charge.

Of the entire amounts received from imposts and duties for transportation through the canal (other than the tonnage and passenger charges heretofore provided for) the United States of Colombia shall receive five per centum for the first twenty years, and three per centum for the remainder of the term of this grant, as its share and proportion, which shall be paid at such times as the Government of Colombia may direct upon full and reasonable notice. The United States of America, or its assignee, conformably to this treaty, shall have full power and authority to define the time, place, and mode of payment of the several

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charges and imposts, dues, and tolls levied and imposed for the benefit of the canal, and to enforce collection and payment of the same in such manner as they may choose. The books and other evidences of the receipts from the business of the canal shall be at all times accessible to the proper officers of the Government of Colombia, and full and complete returns of the receipts of said canal shall be made to such officers as may be appointed, in such manner as may be required by the Government of Colombia, on proper and reasonable notice. All payments required by this treaty to be made by the canal to the Government of Colombia shall be made at the principal office on the line of the canal without any deduction except as provided in Article XVII.

Article XIV.

If the proposed canal shall be constructed east of the line defined in the second article of the charter of the Panama Railroad Company, bearing date the fifth day of July, eighteen hundred and sixty-seven, and approved by the Congress of Colombia on the fifteenth of August, eighteen hundred and sixty-seven, and by reason of the opening of the canal, and without other causes, the business and profits of said Panama Railroad Company should so diminish that they should become unable to pay to the United States of Colombia the sum of two hundred and fifty thousand dollars (as they now do), after first paying their running expenses and necessary repairs, and also a dividend of five per cent. on ten millions of dollars, estimated cost of the road, then the enterprise of the canal shall make good the difference between said sum of two hundred and fifty thousand dollars and the amount actually received by the Government of the United States of Colombia from said railroad company, or may, if it shall so elect, pay the entire amount and be substituted in the place of the United States of Colombia, to recover the same from said railroad company. It is, however, well understood that the said canal enterprise shall not be held to assume either of the obligations above stated, unless the tribunal of arbitrators established in Article XXII shall have decided that the events on which said obligations depend, as recited in this article, have, in fact, taken place.

Article XV.

In case of the construction of the canal west of the line mentioned in Article XIV, the United States of Colombia concede to the United States of America the right and power of accepting or rejecting the sum that may be demanded as indemnity by the said Panama Railroad Company, and also the right and power of nominating the arbitrator on the part of Colombia, as provided in said second article of said contract, and covenant and agree to conform to the wishes and request of the United States of America, both in relation to the acceptance or rejection of the sum which may be demanded by said company, and the appointment of the said arbitrator.

Nothing in this treaty contained shall be construed to release said Panama Railroad Company from the obligations of said contract reserved in favor of the United States of Colombia.

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Article XVI.

For the more complete understanding of the articles of this treaty, which speak of sums of money or refer to the completion of the canal, it is declared—

First. That the money in which said amounts are to be estimated shall be that of the United States of Colombia or its equivalents, whose unit is the *peso*, equal to the French coin of five francs.

Second. That the canal shall be considered as concluded and finished from the time at which the first vessel charged with tolls shall pass from ocean to ocean, although some portions of the work or its accessories may not be fully completed.

Article XVII.

It being the intention of the Government of Colombia to cede, as it hereby does cede, a certain proportion of its share of moneys derived from the canal, according to the preceding articles, for the benefit of the State or States through whose territory the interoceanic canal may pass, the government of such State or States may receive directly from the managers of said canal that portion which may be ceded, as above stated. This portion shall consist, at all events, of the tenth part of that which is received by the United States of Colombia, and of another tenth part, making a fifth part in all, if such State or States shall cede to the Union, to be administered according to article seventy-eighth of the Colombian constitution, the territory comprised between the canal and a belt of fifteen kilometers in depth on each side throughout its whole extent.

In the same proportion the State of Panama shall receive her share of the indemnity which may belong to the United States of Colombia, in case of the opening of the canal within the belt of country covered by the contract with the Panama Railroad Company.

Article XVIII.

The United States of Colombia will not impose any national duties or imposts, and will not permit any taxes, duties, or imposts to be levied by States, municipalities, or any other authorities whatever, upon the vessels, passengers, merchandise, moneys, or other articles which may pass through the canal from ocean to ocean (other than have heretofore been provided in this treaty); but such articles as are destined for use or consumption in the territory of the Republic of Colombia shall be subject to such duties and imposts as are or may be established by her laws.

Article XIX.

All articles of machinery and other materials and supplies of whatever sort necessary and required in the construction and maintenance of the canal, its dependencies and appurtenances, shall be introduced without any duties or imposts of any kind, and the said canal, with all its properties, appendages, and appurtenances, shall remain free from all taxation, imposition, or contribution, national, state, or municipal, during the term of the concession herein granted.

No taxation, contribution, or other burden shall be imposed by the laws or decrees, either of the nation, or of a state or municipal author-

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ity, upon the persons employed on said canal, or upon their private property, other or different in rate, manner, or amount, from the taxation, contribution, or other burdens imposed upon other persons or property within the respective jurisdictions.

Article XX.

The rights and privileges herein specified shall continue for the space and term of one hundred years, commencing from the date at which the canal shall be opened for commerce, according to article XVI; and at the expiration of said term the said canal, with its entire properties, dependencies, and appurtenances, shall vest in absolute ownership and property in the United States of Colombia, without any payment or indemnity whatever. The canal shall be maintained in good order and effective condition until it shall be delivered up as aforesaid. The United States of America shall retain to themselves whatever benefits or profits may have been received by them during the period herein expressed.

Article XXI.

The United States of America may by law transfer all its rights, privileges, franchises, duties, properties, and obligations, in relation to the exploration, surveying, construction, and maintenance of said canal, to any private citizen of said republic, or to an association or corporation created by law, and in such event the said citizen or corporation shall enjoy all the rights, properties, franchises, and privileges herein granted to the United States of America, and shall be subject to all the duties and obligations herein contracted to be done and performed by the United States of America; but such transfer shall not work a complete substitution of such individual or corporation into the place and stead of the United States of America. And the Government of the United States of America will hold itself bound, as trustee for the Government of the United States of Colombia, to enforce the fulfillment of the provisions of this treaty upon the person or corporation which shall derive title from it under such transfer, so far as such provisions shall apply to such person or corporation.

The person or corporation to whom such transfer shall have been made shall hold and enjoy the properties, rights, immunities, and privileges hereinbefore expressed in the said canal and its dependencies and appurtenances, subject, however, to the reservations hereinbefore set forth in favor of the United States of Colombia, for the term herein mentioned. The political obligations contracted between the United States of America and the United States of Colombia, specified in Articles XI and XXV, shall remain permanent and irrevocable.

Article XXII.

If any differences of opinion shall arise between the said person or corporation and the United States of Colombia, in relation to the true meaning or the proper execution and fulfillment of any of the clauses of this treaty, such differences shall be decided by a tribunal composed as follows: each party shall nominate one arbitrator, and the two arbitrators shall nominate a third person as an umpire, to decide those cases in which they shall not agree. The tribunal shall hold its sessions in the city of Bogota, and there shall be no appeal to either party from its decisions.

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If either of the parties shall not make the appointment of an arbitrator within thirty days after being required so to do by the other party, or if a person shall be appointed as arbitrator who shall be unable or unwilling to accept the appointment, in that case the appointment shall be made by the Government of the United States of America. The expenses of the said tribunal shall be paid equally by the two parties.

If the two arbitrators named shall not agree in the choice of an umpire who will accept, the parties shall submit the decision of the questions arising to the arbitrament of some friendly government in the manner stipulated in the following clause:

Should any differences unfortunately arise between the United States of America and the United States of Colombia, respecting the true intent and meaning of the provisions of this treaty, such differences shall be mutually referred to the arbitrament of some impartial friendly power, whose decision shall be final, and shall be fulfilled and performed.

Article XXIII.

In case that the United States of America shall make the transfer treated of in Article XXI, the privileges hereby granted shall cease and determine, and the Government of Colombia shall enter into the possession and gratuitous enjoyment of the canal and its appurtenances in the following cases, viz:

1. If the person or corporation in whose favor the transfer shall have been made shall alienate or lease the enterprise in favor of any foreign government;

2. If the said person or corporation shall co-operate in any act of rebellion against the Government of the United States of Colombia, the object of which shall be to withdraw from its authority and dominion the territory in which the canal be situate;

3. If, after the completion and opening of said canal the transit of vessels through it shall be suspended for more than three years continuously, excepting the case of the acts of God, or of superior force, independent of the will of the said person or corporation.

It is well understood that the cases above enumerated of the lapse of the grant are among those which are within the jurisdiction of the tribunal established under the first part of Article XXII. The said tribunal shall be judges of the facts as well as of the law in all cases.

Article XXIV.

In addition to the cases set forth in the foregoing article, this treaty shall terminate and the rights granted under it shall lapse—

1. If the United States of America shall not execute or cause to be executed the explorations and surveys to which the first article of this treaty refers within the space of three years from the date of the exchange of the ratifications of this treaty.

2. If the work of excavating the canal shall not be commenced within the space of five days from the date of such exchange, provided the work shall be found practicable.

3. If the work shall not be completed within fifteen years from the date of its commencement.

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The periods of time above mentioned shall be deemed to be interrupted and to that extent prolonged, if any instance of superior force or of the act of God shall intervene to prevent the fulfillment of the same without the consent of those in charge of the undertaking.

And inasmuch as the United States of Colombia will be deprived of the right of making other grants in the same matter, and will suffer the injury consequent upon the not undertaking or executing the work of the canal during the period above expressed, the United States of America will make compensation for such injury in the sum of three hundred thousand dollars, Colombian money, if the present treaty shall lapse by reason of any of the causes expressed in this article.

Article XXV.

The United States of America and the United States of Colombia mutually agree to use all possible efforts to obtain from other nations a guarantee in favor of the stipulations of immunity and neutrality mentioned in Article XI, and also in favor of the sovereignty of the United States of Colombia over the territory of the Isthmus of Panama and that of Darien. And the United States of America for their part recognize and renew the stipulations in regard to the aforesaid guarantee of sovereignty contained in the XXXV Article of the treaty of the tenth of June, eighteen hundred and forty-eight, between the two nations. Those nations which, by treaties entered into with the present contracting parties, shall unite in the guarantee of the neutrality of the canal and of sovereignty over the territory, as hereinbefore expressed and given by the United States of America, shall be relieved from tonnage and other imposts upon their ships of war either in full or to such extent as may be stipulated in such treaties.

Article XXVI.

The present treaty shall be approved and ratified by the President of the United States of America, with the advice and consent of the Senate of that nation; and by the President of the United States of Colombia, with the consent and agreement of the Congress of that nation, and the ratification shall be exchanged in the city of Bogota within twenty months from the day of the date of the execution by the plenipotentiaries above named.

In faith of which we, the plenipotentiaries above named, have hereunto set our hands and seals this twenty-sixth day of January, one thousand eight hundred and seventy.

[L. S.] STEPHEN A. HURLBUT,
Minister Resident U. S. America.

[L. S.] JUSTO AROSEMENA,

[L. S.] JACOBO SANCHEZ,
Plenipotenciarios de Colombia.

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[Inclosure No. 4—2.]

[Confidential.—Executive, E. 41st Congress, 3d session.]

Message of the President of the United States, transmitting a copy of the correspondence between the Secretary of State and the minister of the United States at Bogota, upon the subject of the proposed interoceanic canal across the Isthmus of Panama or Darien.

DECEMBER 8, 1870.—Referred to the Committee on Foreign Relations and ordered to be printed in confidence for the use of the Senate.

To the Senate of the United States:

Referring to my message of the 1st of February last, transmitting to the Senate for its consideration, with a view to ratification, a treaty between the United States and the United States of Colombia, for the construction of an interoceanic canal across the Isthmus of Panama or Darien, signed at Bogota on the 26th of January last, I herewith submit correspondence upon the subject between the Secretary of State and the minister of the United States at Bogota, a list of which is hereto appended.

U. S. GRANT.

WASHINGTON, *December 6, 1870.*

List of papers.

Mr. Fish to Mr. Hurlbut, No. 6, September 4, 1869.
Mr. Hurlbut to Mr. Fish, No. 5, November 29, 1869.
Mr. Hurlbut to Mr. Fish, No. 7, January 5, 1870.
Mr. Hurlbut to Mr. Fish, No. 8, February 1, 1870 (2 inclosures).
Mr. Hurlbut to Mr. Fish, No. 9, March 4, 1870.
Mr. Hurlbut to Mr. Fish, March 12, 1870 (5 inclosures).
Mr. Fish to Mr. Hurlbut, No. 15, March 19, 1870.
Mr. Fish to Mr. Hurlbut (private), March 19, 1870.
Mr. Hurlbut to Mr. Fish, No. 19, April 17, 1870.
Mr. Hurlbut to Mr. Fish, No. 21, May 6, 1870.
Mr. Hurlbut to Mr. Fish, No. 23, May 16, 1870.
Mr. Hurlbut to Mr. Fish, No. 26, June 3, 1870 (inclosure).
Mr. Hurlbut to Mr. Fish, No. 27, June 6, 1870.
Mr. Hurlbut to Mr. Fish, No. 30, June 16, 1870.
Mr. Hurlbut to Mr. Fish, No. 33, July 13, 1870 (2 inclosures).

Mr. Fish to Mr. S. A. Hurlbut.

No. 6.] DEPARTMENT OF STATE,
Washington, September 4, 1869.

SIR: I have read with much interest, and have submitted to the President, the memorandum on the interoceanic canal which accompanied your letter of 29th August. The proposal of a protectorate over the canal, in which other maritime powers should be joined with the United States in equal control, would probably remove many of the obstacles to the attainment of the grant, and may secure the ratification of a treaty by the Colombian Government. But in the present state of international law, such joint protectorate would be the

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source of future trouble, and, while it might facilitate the concession by the Colombian Government, would be viewed with apprehension in the country, and might probably prove an obstacle to the ratification by the United States Senate of a treaty on the subject. Apart, however, from the latter consideration of expediency, the President is disinclined to enter into any entanglement in participation of control over the work with other powers. He regards it as an American enterprise, which he desires to be undertaken under American auspices, to the benefit of which the whole commercial world should be fully admitted. There is no objection to the allotment of a share in the stock of the company, and thus to a participation in whatever profits may be realized with other powers. Your proposition in this respect meets his approval, with the limitation that a majority of the stock (say 55 per cent of the whole) shall be held by citizens of the United States. If, then, the allotment of stock (less than half) to the other maritime nations, with a vice-president and local board in each of the countries thus participating in the construction, will secure the cooperation of these countries, or prevent their opposition to the accession of Colombia, you are authorized to assure it. The general views of your memorandum, limited as above, meet the approval of the President. Should you be able to negotiate a convention with Colombia which shall receive the approval of the two Governments, the President will favor the granting of a charter, with the most liberal provisions in the general direction indicated in your memorandum. Your own negotiation and the discussion upon the treaty may suggest modifications of the details of a charter, to which, therefore, it is not advisable, as it is not practicable at present, to commit the Government. But you may assume that the general outline you have indicated, with the limitation before mentioned, will receive the sanction and support of the President.

HAMILTON FISH.

Mr. S. A. Hurlbut to Mr. Fish.

No. 5.] LEGATION OF THE UNITED STATES,
Bogota, November 29, 1869. (Received January 12.)

SIR: * * * * * *

I have prepared a note to the secretary for foreign affairs proposing the opening of negotiations on the subject of the canal, which I shall forward to him on December 1.

I have had several informal conversations with Señor Pradilla, the secretary of foreign affairs, and am advised confidentially by him that the negotiations on the part of Colombia will be devolved upon commissioners known to be favorable to the United States. It is perfectly understood here that the summary rejection of the treaty by the Colombian senate was, and was intended to be, a rebuke, on strict party grounds, to the Gutierrez administration. The new senate, it is hoped, will have other feelings, and address themselves to the question on different grounds. The truth is, that the construction of the canal under the national authority is the only safeguard against disintegration of this Republic.

S. A. HURLBUT.

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Mr. S. A. Hurlbut to Mr. Fish.

No. 7.] LEGATION OF THE UNITED STATES,
Bogota, January 5, 1870. (Received March 1.)

SIR: The President of Colombia having appointed Dr. Justo Anosemèna and Dr. Jacoba Sanchez as plenipotentiaries, the sessions of the conference were duly opened, have been continued from time to time, and are now pending. We have agreed upon nearly all the material points of the treaty, and I think it will be decidedly superior in advantages to the United States to the one negotiated by my predecessor. The articles are not yet reduced to form, but I give the substance of the principal provisions. The term of the grant is one hundred years from the date of opening the canal for business. The grant of lands in aid is for 200,000 hectares (494,220 acres), to be chosen by the United States in any part of the State in which the canal shall be constructed. Lands which may border upon the canal on each side are to be equally divided between the two countries. The right of way for the canal and its dependencies is given free over government lands or waters; and all national lands and waters necessary for the canal, its ports, harbors, and other accessories are also given free of charge. The United States are permitted to use military and naval force to protect the explorations and surveys. Land force not to exceed five hundred men, except by consent of Colombia. They are also permitted to use land and naval forces to protect the construction of the canal; such land force not to exceed one thousand men without consent of Colombia. Three years are allowed for explorations and determining the practicability of the work. Five years to commence the work. These periods commence from the exchange of ratifications. Fifteen years are allowed to complete the canal, counting from the date of the commencement of the work. All machinery and supplies and other necessaries of the work, either for construction or maintenance, to be absolutely free of all duties. No taxes or imposts, national, State, or municipal, ever to be imposed on the canal or any of its properties or franchises. No special taxes upon the persons or property of any employé of the canal other and different from the general contributions and taxes imposed upon citizens by law. The canal to be opened to all nations at peace with *both parties*, on terms of absolute equality of duty and imposts; but to be rigorously closed against the flag of all nations at war with either. Ships of war, troops, and munitions of the United States and of Colombia to pass freely through the canal *at all times* free of charge. Yards and docks may be erected by the United States at each extremity of the canal for the repair and supply of their ships, and a sufficient force of *police* stationed at such to guard public property. I was obliged to use the word "police," as this nation, being weak, is excessively jealous of another flag on their territory; but I apprehend marines will make a capital "police." The United States agree to aid in protecting and defending the canal against foreign attack and invasion; and Colombia to protect it as part of her territory to the extent of her ability.

The duties on the canal are to be levied in several forms: 1st. Tonnage duty on vessels, including ships of war of other nations. 2d. Tax on passengers. 3d. *Ad valorem* duties on freights, cargoes, and merchandise.

1st. Of the above Colombia receives, as specific charges, 10 cents

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per ton for the first ten years, and five cents additional for every five years thereafter until the maximum of 40 cents shall be reached: *Provided*, That such specific charge shall in no case exceed 10 per cent of the amount charged per ton by the canal.

2d. Passenger tax. Colombia receives $2 for each cabin passenger and $1 for each steerage passenger.

3d. *Ad valorem* duties. Colombia receives 5 per cent.

There is no participation in freights proper, nor for the use of harbors, docks, wharves, warehouses, towage, and the many incidental services which will attend such work.

Ad valorem duties on cargoes and merchandise are to be assessed on the values at the port of shipment if they can be fairly ascertained. If there be no port of shipment (as in case of whalers), or the value there can not be fairly ascertained, then on the value at the entry into the canal. The specific portions due to Colombia may be demanded by her, to be paid direct to her own officers at canal; the others, quarterly, half-yearly, or yearly, as Colombia may by law determine. The entire government, direction, and internal management of the canal to be wholly, and without interference, in the United States; Colombia, however, preserving her sovereignty and jurisdiction over the territory and its inhabitants. All questions between the United States and Colombia, in relation to this treaty, to be determined by arbitration of some friendly powers. All rights and privileges granted may be transferred to any citizen or corporation created by law of the United States as fully as granted to the United States, but the United States, as trustee for Colombia, in case of such transfer, will see to the enforcement of the reservations in favor of Colombia. All questions between the canal company and Colombia to be referred to arbitrators, mutually selected, to sit in Bogota; the expenses of which tribunal shall be equally borne by each party. The principal difficulty seems to be in relation to the Panama Railroad Company. That company procured in 1867 a renewal of its charter, for which renewal it paid $1,000,000, and agreed to pay the sum of $250,000 annually. To protect themselves against this very project of a canal they inserted a very shrewd provision in the second article, to wit: That if a canal shall be built across the Isthmus west of a line drawn from Cape Tiburon to Point Garachine, (which is the only practicable country), then they should be entitled to equitable damages arising from such construction; that they (the company) may make out their claim, and Colombia may accept or reject it, and in case of rejection the question shall be submitted to arbitrators, one chosen by the railroad, the other by Colombia, these two to select a third, whose decision shall be final. But Colombia is to receive half of such damages. Thus the tribunal is grossly partial and unjust. I endeavored in the conferences to have the moiety belonging to Colombia assigned to the United States, but it was decidedly negatived. I then proposed that the United States should have the option of accepting or rejecting the claim made by the company, and of apportioning the arbitrators to be named by Colombia, so as to secure an equal chance in the tribunal of the canal. This proposition was finally agreed to, and I consider it worth $3,000,000 to the canal. This feature, although of great importance to us, will bring down the unqualified opposition of the Panama Railroad Company to the confirmation of the treaty by Congress, and if I can not get it confirmed before the Panama company can get its forces and its money here I

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shall have a very hard fight with them. The equity of the principle is so manifest that in any other country it would be sure to pass without question; but here, where most of the Congress are venal, the struggle will be of money. If the canal company were organized they could meet this opposition. I shall quietly and indirectly use such influences as may be of advantage.

I have thus given you a sketch of the principal provisions of the treaty. To the United States as a nation the unqualified right of passing ships of war, troops, and munitions *at all times*, free of charge, and the right of docks and yards for repairs, &c., are enormous advantages over the other treaty. It gives us secure and rapid transit by sea from one coast to the other of our domain, and excludes from these advantages any nation in hostility with us. It gives us harbors of refuge and repairs for our fleets on the Atlantic and Pacific.

The rates of the share of Columbia in the earnings of the canal are the best I could obtain, and are such as, in my judgment, will not hinder the successful and profitable use and management of the work. The 5 per cent of receipts "*ad valorem*" is reasonable, and only applies to cargoes and merchandise passing through the canal. Services rendered, as towage, warehouse, wharfage, and harbor dues, do not enter into this account, nor do freights proper, *i. e.*, the earnings of the vessel.

I think you may safely rely upon the fact that the principal features above sketched out will be preserved in the final draught.

I expect that the treaty will be concluded and signed in time for the next mail. As soon as it is completed and executed I shall send it forward by special messenger, to whom I shall request that the customary compensation for this difficult and expensive voyage may be made.

S. A. HURLBUT.

Mr. S. A. Hurlbut to Mr. Fish.

No. 8.] LEGATION OF THE UNITED STATES,
Bogota, February 1, 1870.

SIR: The treaty for the construction and regulation of an interoceanic canal across the Isthmus of Panama or Darien was duly signed, sealed, and delivered on the 26th day of January, A. D. 1870. I send it to the United States in charge of Mr. Charles Bransley, a native Colombian, born of British parents, who proceeds to the United States to complete his education in our normal school, with the view of returning and introducing the system in this country. For the more perfect understanding of portions of the treaty I annex, in the form of memoranda, some explanations of different articles referring to local affairs and past contracts entered into by the Colombian Government. I am not fully satisfied with some of the provisions of the treaty, and think that the Colombian commissioners have obtained somewhat too large a percentage, but the expectations of the people of this country have been raised to a very high pitch by the previous negotiations, and by the unwonted and extraordinary prodigality manifested, in promises, at least, by the last administration. This treaty is the best I am able to obtain at the present time, and as such I have accepted it.

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The canal once an established fact under a wealthy corporation, backed by the United States, all minor matters will be readily arranged. The public virtue of this country can not withstand the capital and influence of the Panama Railroad, and I am satisfied the canal company can at any time buy out, by payment in the lump, all reservations and percentages belonging to Colombia.

How it will be as to the approval of the treaty by Congress I can not yet say. The treaty of 1848, guaranteeing sovereignty of Colombia over the isthmus, has expired, and, without compromising the United States in any way, I have given out as my opinion that the United States will not renew the guarantee if this treaty is rejected.

S. A. HURLBUT.

Memoranda on canal treaty.

The grants on the part of Colombia are—

1. The right of exploration and survey.
2. The right of construction and maintenance.
3. The right of levying duties, &c.
4. Freedom from duties and free transit at all times for ships, troops, and munitions of war.
5. The right to dock-yards, &c., for ships of war.
6. Immunity of canal property from *all taxes*, &c.
7. Employés, &c., of canal liable only to such general taxes as may be imposed.
8. Closing the canal against the flag of all nations hostile to the United States.
9. Free grant of all national lands necessary for canal; also waters.
10. Grant of 200,000 hectares of vacant lands.
11. The right of eminent domain to condemn private lands, &c.
12. The right to transfer these privileges to a corporation.

The corresponding obligations on the part of the United States—

1. To make the explorations within three years.
2. To commence the construction, if found practicable, within five years.
3. To complete the canal within fifteen years from commencement.
4. Or, in default, to pay $300,000.
5. To defend the canal from foreign attack and invasion.
6. To guarantee the sovereignty of Colombia.
7. To use its influence to procure from other nations the same guarantee and also of neutrality.
8. To act as trustee for Colombia to enforce performance of contract against the assignee.
9. To negotiate and to settle the amount of damages to the Panama Railroad.
10. To make good the loss to Colombia by reason of opening the canal east of Cape Tiburon, if such loss shall occur.
11. To transfer these privileges to a corporation, &c.
12. To establish, change, and alter rates of tolls on tonnage and passengers.
13. To establish, &c., as to merchandise ad valorem.
14. To establish, &c., for services and for use of harbors, wharves, &c.

These are the leading mutual concessions in the treaty. Politically and for military and naval purposes, I consider a great deal gained.

The monetary arrangements and the peculiar arrangements resulting from the relations of Colombia to the Panama Railroad deserves a special notice.

I attach hereto the second article of the recharter of the Panama Railroad Company, and repeat, somewhat in detail, what I already have written.

By the contract of 1867, in consideration of $1,000,000 gold in hand, and an engagement to pay $250,000 annually, the railroad company obtained a recharter. Looking to the possibility of a canal, they obtained from the Colombia Congress a reservation of all the territory on the Isthmus of Panama west of a line drawn from Cape Tiburon to Point Garachine, including the San Blas and San Miguel routes; including, in fact, the only territory available for a canal. Good harbors are an essential condition to an interoceanic canal, and no harbors are to be found to the east of that line without entering into the Gulf of Darien and the Atrato route, which, from the conditions of

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climate and soil, is absolutely impracticable. But this privilege is limited in the same article (2d) to a claim for damages to be settled either by agreement between the company and Colombia or by a board of arbiters; one appointed by the company, one by Colombia. Half the damages to accrue to the benefit of Colombia. This being an existing contract, could not be denied or evaded. The only thing I could do has been done. The right of Colombia to agree or disagree and the right to name an arbitrator are delegated to the United States by article 15 of the treaty. I endeavored to obtain a cession of the moiety of damages falling to Colombia, but failed. Still there remained to the Colombian plenipotentiaries the possibility of a canal east of that line and the consequent loss of revenue by the destruction of business of the Panama Railroad. I have already stated that I am sure no canal can be there constructed, but I consented to article 14. My own well-informed opinion is that long before the completion of the canal, and from wholly different forms of competition, the Panama Railroad will cease to be the gigantic monopoly that it has been, and will be very glad to come to reasonable terms.

RATES OF PROPORTION ASSIGNED TO COLOMBIA BY THE TREATY.

These are the forms in which the revenues of the canal will be assessed and collected on the different classes of taxable material. These are: Ships, passengers, merchandise.

1. *Ships.*—These are chargeable with transit duties loaded or unloaded by the ton, American measurement. Colombia receives 10 cents per ton for the first ten years, and 5 cents per ton additional every succeeding five years until the maximum of 40 cents per ton is reached, with a controlling proviso that such rate or proportion shall never exceed 10 per cent of the amount charged by the canal. A ship of 1,000 tons, we will say, will pay for transit duty on the vessel alone to Colombia for the first ten years, $100, and can well pay the canal from $2,500 to $4,500 for the saving of time, insurance, wages, &c., by the transit, above the voyage round the Horn. The element of time alone saved is worth $3 per ton, and this only to the ship.

2. *Passengers.*—The Panama Railroad charges $25 per passenger. This is, of course, extortionate; but from $10 to $15 will be considered by the traveling community reasonable. Of this, Colombia receives $2 for cabin, and $1 for steerage. I consider it is too much, but as the Colombian plenipotentiaries were disposed to press these specific charges upon the least fruitful sources of revenues, I allowed it to pass.

3. *Merchandise.*—This is the great source of revenue, constantly increasing, with commerce, in amount and in value. The canal is allowed to charge *ad valorem* upon the home or shipping value, if it can be fairly ascertained; if not, upon valuation made at the canal. A brig or small vessel of 300 tons, paying but a small amount on tonnage, may carry a cargo of greater value than a steamer or ship of 2,000 tons. The canal receives on the value of the merchandise or cargo at such rate as it may establish, and of the amounts thus received pays to Colombia 5 per cent of the gross receipts for the first twenty years, and 3 per cent afterward, say for eighty years. Thus the high rate of participation in duties on merchandise corresponds to the low rates of tonnage duties, and *vice versa.*

I have no doubt that the principal revenue of the canal will come from this duty on merchandise, and the rates are low.[1]

A canal built as this will be will pay but a small sum for repairs and running expenses in comparison with a railroad, and the Illinois Central Railroad pays 7 per cent of its gross earnings to the State.

I have thus, in the construction of this treaty, yielded in the specific imposts on tonnage and passengers to a rate somewhat too high, but recovered in the *ad valorem* on merchandise. I believe the canal can be made to pay 10 per cent on $60,000,000, and I have no doubt that it will appear from the explanations of Admiral Davis that it can be constructed for less than that sum. Harbor and port dues, towage, and other services do not enter into the count with Colombia, whose only percentage will be on values of freight, &c., transported through the canal.

For the advancement of civilization and commerce, for the maintenance of our prestige in the two Americas, for the more thorough linking together of our Pacific and Atlantic States, for the security of the Union, for the military advantages in case of war, for the practical possession of harbors of refuge and repair of our ships in the Atlantic and Pacific, at each extremity of the great highways of commerce, I consider this treaty valuable to the United States, and the agreement on our part to protect and defend it as granted is the necessary complement of the situation.

No capitalist will invest in such an enterprise under the flag of Colombia alone.

[1] The Panama Railroad charges from $20 to $25 per ton on merchandise transported.

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and the power which creates the corporation is bound to guarantee it undisturbed enjoyment.

No nation now wishes to challenge the United States, and her guarantee of neutrality and of protection will be concurred in by all maritime powers. This is indicated in article 25, which, in my judgment, means nothing and confers nothing, but is rather a limitation of any act of Colombia without the assent of the United States. It was inserted for "home consumption," to be used in Congress against those who are European in tendency and hostile to the United States.

I have concluded a disagreeable duty in obtaining this treaty, fighting against many obstacles of foreign and local origin, against the weight of England and France, and hope the result expressed in the treaty may be promptly accepted by the President and Senate, and the work vigorously pushed to a triumphant conclusion.

STEPHEN A. HURLBUT,
Minister Resident United States America.

Contract with Panama Railroad Company, approved 16th August, 1867.

ARTICLE 2. The Government of the republic binds itself during the term of the exclusive privilege given to the company not to construct or grant to any person or company whatever the right of establishing any other railroad on the Isthmus of Panama, and also stipulates that while the aforesaid privilege exists said Government will not itself undertake, nor permit any other person to undertake, without the consent and agreement of said company, the opening or construction of any maritime canal which shall unite the two oceans, across said Isthmus of Panama, to the west of a line drawn from Cape Tiburon, on the Atlantic, to Point Garachine, on the Pacific. But it is distinctly understood that the right given to said company to yield its consent does not intend that said company may deny the construction of any canal across the Isthmus of Panama (except on the actual line of the railroad), but only that it may demand an equitable price for said privilege, and as an indemnity for the losses which said company may suffer by the competition of the canal. If the sum demanded by the company shall not be considered equitable by the Government of Colombia, then it shall be determined by arbitrators in New York or Panama, one nominated by the Government and one by the company; and in case they fail to agree, the two shall nominate a third, whose decision shall be without appeal. In order to make up their decision, the arbitrators shall take into consideration the statements on which the company relies, and the information furnished by the Government, and, in view of these, shall decide, without appeal, what they believe to be just and equitable. The sum, be it what it may, which shall finally be determined, shall be divided equally between the Government of Colombia and the railroad company.

True translation.

S. A. HURLBUT,

Mr. S. A. Hurlbut to Mr. Fish.

No. 9.] LEGATION OF THE UNITED STATES OF AMERICA,
Bogota, March 4, 1870. (Received April 11.)

SIR: The canal treaty, having been submitted to the Senate, was referred to a committee of three. After long consideration the committee made three reports, one for each member, on yesterday, the 3d March; General Herron favorable to the confirmation, but suggesting an amendment "that during three years given to the United States for explorations and determining the practicability of the work, they should not enter into negotiations with any other country for similar privileges," referring, as I understand, to Nicaragua. This is, in my judgment, included in the good faith of the treaty, and I see no objection to it as a supplemental article.

Dr. Rojas, of the committee, reports in favor of the treaty, but has, unfortunately, made a very long report, and suggests numerous amendments, most of which, so far as I yet understand them, are inadmissible.

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Dr. Carlos Martin is totally opposed to the project, and so reports. I merely heard these read in the Senate yesterday, and have not yet been able to obtain copies.

Martin's opposition is known to be on personal grounds. He was named as one of the plenipotentiaries, but declined, unless the whole matter should be confided to him alone.

I have made a very careful canvass of the Senate. It consists of twenty-seven members. Of these I feel pretty sure of fifteen, and have the promise of eighteen. A majority is sufficient to approve. If these were all men of position and principle I should feel quite assured, but they are not.

At present we wait for Salgar, the President elect, who will be in this city on the 15th instant, and be inaugurated on the 1st of April. I am assured that he favors the treaty, and if he will lend his influence I shall feel quite certain of prompt and favorable action. He was declared President elect on the 1st of this month without any disturbance or opposition, and I think that peace and good order may be considered secure for the next two years.

There have been sent in to the Government three propositions by private parties to engage in the construction of the canal. Two of these are English, one French, but they have not the indorsement of their respective Governments, and I consider them of no special importance.

It is the fashion of this country to publish all official matters, and treaties occupy the same position as other documents. The canal treaty was published here on the 27th January, 1870.

S. A. HURLBUT.

Mr. S. A. Hurlbut to Mr. Fish.

LEGATION OF THE UNITED STATES,
Bogota, March 12, 1870. (Received April 28.)

SIR: I have an opportunity of forwarding this by private hands to New York, and take the occasion to send, for the consideration of the Department, and, if thought advisable, of the Senate, the inclosed memorandum and tables showing certain special advantages to the United States in the modes of levying tolls, &c., as provided in the treaty. Colombia's proportion of the gross receipts for the first twenty years is less than 7 per cent and need not exceed 5½ per cent on the remaining eighty years.

S. A. HURLBUT.

MEMORANDUM.

BOGOTA, *March 12, 1870.*

By the treaty the United States, or its assignee, may levy duties on tonnage, merchandise, passengers. I propose to show that these may be, and should be, so appointed as to give in practice a solid and substantial advantage to American commerce. The productions of the United States likely to move through the canal are of considerable bulk and relatively small value. The productions of Europe likely to

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move through the canal are of relatively small bulk and great value. (See Table 1 attached to this report.)

The *low rate* of tonnage and an increased rate *ad valorem* on merchandise will create a strong discrimination in favor of American vessels and American products. The tonnage and values of merchandise in 1857, which would have passed through the canal, are stated in Admiral Davis's report, and are attached to this memorandum as Table No. 1. It appears from this table that in 1857 the United States, with a tonnage superior to that of England by 828,190 tons, shows cargo value inferior by the sum of $38,890,147.

France, with about one-eleventh of tonnage of the United States, shows value of cargo over one-half. The great development of exportation of cereals and other bulky products from California has undoubtedly increased this disproportion. Thus a low rate of tonnage duty and a comparatively high rate on values will be favorable to the United States and unfavorable to European states.

The effect of the Suez Canal upon European commerce, and the extent to which it may divert business from the Panama Canal, it is as yet impossible to estimate. But undertaking to guess from present appearances, and endeavoring to be within probable limits, I assume this state of things in 1882, by which time the Panama Canal should be open for business:

I estimate that the general commerce of the world tributary to this canal in 1857 will have increased by 1882 50 per cent, and that the Suez Canal will have attracted one-half of all the then commerce represented in Table No. 1 other than that of the United States. I therefore reconstruct Table No. 1 for 1857 on the above basis, and produce Table No. 2 for 1882, and thus obtain the probable tonnage and values for the opening of the Panama Canal.

For convenience of figures and as a full estimate, we will suppose that the canal shall have then cost $100,000,000. We will further assume that it ought upon that capital to realize a gross revenue of $15,000,000. To obtain this revenue from tonnage duties alone, the duty must be $4.81½ per ton. On that basis the proportions paid by each nation are shown in Table No. 3.

To receive the same amount of revenue ($15,000,000) from *ad valorem* duties on merchandise alone, the proportions payable by each nation will appear in Table No. 4.

The difference to the United States arising from the adoption of the one system or the other exclusively appears from comparison of Tables No. 3 and No. 4, as follows:

The United States pay on tonnage duties alone	$11,254,000
Ad valorem alone	7,240,000
Difference	4,014,000

As to the other countries the case is reversed, England paying $1,905,000, and France $1,638,000—more on the basis of values than on that of tonnage.

Now by the treaty it is not incumbent on the United States to impose both of those classes of duty. They have power to do so or not. Colombia is to receive a certain fixed tonnage rate, but not to exceed in any case one-tenth of the sum levied for the use of the canal. If the canal imposes no tonnage rate, will Colombia receive anything? This, of course, is an extreme and highly improbable event, nor, in

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fact, would such action be in good faith; but the power of graduating the tonnage imposts and *ad valorem* duties, so as to keep the Colombian share in reasonable bounds and so as to protect American commerce, was carefully considered by me and inserted as the only way in my power to restrain within due limit the avarice of this people and to do justice to the United States.

I have constructed and attached Table No. 5, calculated on $1.50 tonnage and 3 per cent *ad valorem*, and also on $2 tonnage and 2½ per cent *ad valorem*, assuming, of course, the tonnage and value as in Table No. 2.

The share of Colombia, at 10 cents per ton and 5 per cent on income, of course will be deducted from above gross amounts. This is only for the first ten years. At the end of twenty years, tonnage duties being held during that time at from $1.50 to $2 per ton, Colombia receiving during the time 10 cents, 15 cents, and 20 cents per ton, her percentage of general receipts will fall to 3 per cent.

As a final table, I have constructed and attach No. 6, in which is shown the results of twenty years' business of the canal upon the data set forth in the preceding tables, on the basis of $2 per ton and 2½ per cent on merchandise values, adding probable amounts from passengers at $10 per head, and from incidentals (as stated in second schedule of Table No. 5 for one year), and deducting the proportions due to Colombia, under the treaty, and 25 per cent for expenses of administration and repairs, &c. The net balance in favor of the canal, as the clear earnings of these 20 years, amounts to $218,308,093, on an assumed capital of $100,000,000. For the next 80 years of the privilege the percentage of Colombia on the general receipts falls to 3 per cent, and the tonnage duty may be held at $2 or lowered, which latter, in my judgment, would be advisable.

In these estimates I have not taken into account the probable increase of business stimulated by the competititon of the canal; it can scarcely be stated lower than 10 per cent per annum.

I have placed the expenses of managing and maintaining the canal at 25 per cent of gross receipts, which is very high, as the work, if properly constructed, must be of unusual solidity and will require few repairs. Neither have I considered at all the grant of lands.

My principal object has been to show that we have the power to adopt the scale of duties, so as to work to the advantage of American interests and restrain the proportion of Colombia within due bounds.

I wish the work could be done by the nation and for the nation; but as it is probable that the privilege will be transferred to a corporation, it appears to me that strong powers of inspection and direction ought to be reserved to the United States. If a loan of the credit of the country or guarantee of interest is given, provision should be made for its repayment or for acquisition of stock in the company with a voice in the direction. It is too large a matter and pregnant with too many interests of national importance to be yielded exclusively into the hands of a private corporation.

S. A. HURLBUT.

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TABLE 1.—*Tonnage and value of cargo shipping which would have passed through the canal if opened in 1857 (Davis's report).*

Nations.	Tonnage.	Values.
United States	1,857,485	$100,294,687
England	1,029,295	139,184,834
France	162,735	59,073,859
Other countries	44,555	16,802,600
	3,094,070	315,355,380

TABLE 2.—*Probable tonnage and value in 1882.*

Nations.	Tonnage.	Values.
United States	2,786,227	$150,442,030
England	771,970	104,388,625
France	122,062	44,305,394
Other countries	33,417	12,601,500
	3,713,676	311,737,549

TABLE 3.

To obtain a revenue of $15,000,000 by tonnage duty alone (duty $4.81½ per ton), charges would be to the nations, respectively, on tonnage from Table 2:

United States	$11,254,000
England	3,118,000
France	493,000
Other countries	135,000
	15,000,000

TABLE 4.

To obtain the same revenue ($15,000,000) by duties on cargoes (ad valorem) would give to each nation:

United States	$7,240,000
England	5,023,000
France	2,131,000
Other countries	606,000
	15,000,000

TABLE 5.—*Statement of revenue on ($15,000,000) mixed basis, tonnage, and ad valorem.*

Tons, 3,713,676, at $1.50	$5,570,514
Values, $311,737,549, at 3 per cent	9,352,126
Incidentals, &c	77,360
	15,000,000

Or at the following rates:

Tonnage, $2 per ton	7,427,352
Values, at 2½ per cent	7,793,425
	15,220,777

Add to either basis:

Passengers 50,000, at $10	500,000
Towage, light duty, harbor duty, warehouses, &c	150,000
	15,870,777

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TABLE 6.—*Probable earnings of the canal for twenty years on basis of $2 per ton, and 2½ per cent on values, &c., as in Table 5.*

Annual revenue, $15,870,777, amounts in twenty years to		$317,415,540
Deduct for share of Colombia, ten years, 10 cents per ton	$3,713,696	
Five years, at 15 cents	2,785,265	
Five years, at 20 cents	3,713,696	
Five per cent on income from values for twenty years	7,793,425	
	18,006,062	
Two dollars on passengers for twenty years	2,000,000	
	20,006,062	
Expenses, &c., 25 per cent	79,101,385	
		99,107,447
		218,308,093

Percentage of Colombia on gross receipts, .0633, or six and three-tenths per cent.

Mr. Fish to Mr. S. A. Hurlbut.

No. 15.] DEPARTMENT OF STATE,
Washington, March 19, 1870.

SIR: Your dispatch No. 7, of the 5th of January last, relative to the negotiation of a new treaty with Colombia relative to the Darien Canal, has been received. No definite opinion upon the subject can be formed here until the treaty itself shall have reached here. The abstract which you give of the points which you say have been assented to by the negotiators on the part of Colombia has been compared with the last treaty, which was not approved by the Colombian Congress. While many of the articles in the proposed convention appear to be almost identical with those in the one referred to, the new articles seem to be improvements likely to be mutually advantageous. At one time the Department believed that you were probably correct in anticipating hostility from the Panama Railway Company to any treaty upon the subject. Recently, however, informal assurances have been received from Mr. Hoadly, the president of the company, that no feelings or purposes are entertained by them in opposition to the canal. There may be cause to anticipate hostility from foreigners, who would prefer themselves to undertake and to have exclusive control over the enterprise. You will no doubt be vigilant, and, we trust, successful, in overcoming any opposition from such quarters.

HAMILTON FISH.

Mr. Fish to Mr. S. A. Hurlbut.

[Private.]

DEPARTMENT OF STATE,
Washington, March 19, 1870.

SIR: Not long since I received a visit from an English gentleman, named Lanauze, who said he was a representative of capitalists in his own country who were able and willing at once to provide the funds

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necessary for the construction of the Darien Canal. He seemed to wish that we should so shape our proceedings as to enable his friend or associate only to embark in that enterprise, and thereby virtually to obtain paramount control over it. I replied that we preferred that the canal should be constructed by our citizens, who could easily provide the means if the practicability of the work should be shown by the survey. I added that the stock of the company which would be formed for the purpose would probably be in the open market and might be bought by any person. The gentleman seemed so disappointed at the result of his interview that he may try in some way to thwart your convention at Bogota, whither, I understand, he was about to proceed.

HAMILTON FISH.

Mr. S. A. Hurlbut to Mr. Fish.

No. 19.] LEGATION OF THE UNITED STATES,
Bogota, April 17, 1870.

SIR: Before and immediately after his inauguration I was assured by General Salgar that the weight of his administration would be given in favor of the canal treaty as signed. Three days since I was invited by the secretary of foreign relations, Señor Tapata, to a conference at his office. Then, for the first time, I learned that the Administration would not support article 11 of the treaty, inasmuch as they considered that, by conceding to the United States the privileges therein given, Colombia would make herself party belligerent in any war in which the United States should become involved. He therefore informed me that the administration would insist upon a radical change in that article, returning to the principal of neutrality. He also asked my opinion as to the effect of such change upon the prospects of approval of the treaty in the United States. I answered that I had no doubt but that the political and military advantages secured by that article would be exceedingly popular in the United States, and were the only national inducements to its acceptance; that deprived of these features it became solely a question of dollars and cents, in fact a commercial speculation; that the grant of these privileges was my principal inducement for accepting the high rates of compensation given to Colombia.

Señor Tapata expressed himself very little interested in the money receipts and very much in the political complications which might result from retention of article 11. I requested him to wait for the coming of the mail due here on the 13th, but so far it has not arrived I must therefore act in this matter upon my own responsibility.

This change in policy is due, without doubt, to the action of Mr. Bunch, her Britannic Majesty's chargé. He has been exceedingly active for two weeks past, and used some rather strange means to deepen the hold he has on this people. For example, on Good Friday the British flag was displayed at half-mast, and Mr. Bunch attended early mass at the cathedral, carrying a lighted candle in some procession which made part of the service. The concessions on the part of the virtual head of the English Church in Bogota, added to his long acquaintance and thorough knowledge of the prominent politicians, and the immense hold which England, as her great creditor, has upon this country, combine to make his influence very powerful. To this I attribute the

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change. I therefore expect that article 11 will be modified, and my effort is to control the modification. I have therefore offered to modify said article, or rather approve such modification, in accordance with the principles of the Clayton-Bulwer treaty, a copy of which modification I attach, marked Exhibit A. Our friends in the Senate say they will pass the article thus modified whether the administration approve it or not. I hope it may be done. If, however, this should fail, there remains to me only one course.

It becomes my duty to avail myself of this anxiety on the part of the Colombian Government to secure all the monetary advantages possible. In that event I shall therefore submit to the Government that, in the event of the adoption of neutrality, they should amend article 14, and release to the United States all their claims to the moiety of damages to the Panama Railroad Company referred to in article 15, and also surrender all participation and share in profits of the canal provided for in articles 12 and 13, accepting as sole compensation for Colombia 15 to 20 cents tonnage duty in lieu of everything else.

It is absolutely certain that article 11, as it stands, cannot pass if the administration oppose it, and it is certain, I think, that they will oppose it or modify it. I have informed the secretary that I protest against any alteration of article 11; but if it should be altered in conformity substantially to the views expressed in Exhibit A, that I shall recommend concurrence in said modification.

I am exceedingly annoyed by the failure of the mail at this precise juncture, when I had reason to expect your opinion and that of the President upon the treaty. I know nothing of the impression made at home by the provisions of the treaty, having not even seen a newspaper comment upon the subject, and must therefore act upon my own notions of probable advantage which are to yield nothing further as in Exhibit A, and in case I find the Government bent upon destroying the special national privileges conceded in article 11, then to guide them, if I can, to the very lowest rates of participation in profits, so that if the treaty fails in its national point of view it may be a success as in an affair of finance.

S. A. HURLBUT,
Minister Resident United States America.

EXHIBIT A.

At the end of the second paragraph of the 11th article, after the clause "but said canal shall be closed against the flag of all nations which may be at war with either the one or the other of the contracting parties," add the following: "Except in the cases provided for in the clauses following, that is to say: It being the intent and purpose of both the high contracting parties that so far as practicable the said canal shall be and remain a safe and privileged channel for the lawful commerce of all maritime nations, it is therefore stipulated and agreed that neither the United States of America nor the United States of Colombia, in case of war with any other nation, will exercise the belligerent right of capture, detention, or blockade of merchant vessels of said other hostile nation within the limits of said canal, its ports, harbors, and dependencies, and such distance of open sea as may hereafter be determined: *Provided always*, That the benefits of the provision in this clause above expressed shall extend to the merchant marine of those nations only which shall by treaty with both the present contracting parties join with the United States in the guarantee of the sovereignty of Colombia and the territory of said canal, and of the immunity and neutrality of the said canal, its ports, harbors, and dependencies, and the open sea adjacent, and shall give the same reciprocal rights of exemption from capture, blockade, and detention within the limits aforesaid to the merchant vessels of the United States of America and the United States of Colombia.

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Mr. S. A. Hurlbut to Mr. Fish.

No. 21.] LEGATION OF THE UNITED STATES,
Bogota, May 6, 1870.

SIR: The present prospect of affairs in relation to the treaty is by no means flattering. There is no probability that final action will be had in the Senate for thirty days to come. There is a clear majority in the Senate in favor of *some* treaty on the canal question with the United States, but it is as yet impossible to get that majority to unite upon details. They take each article up in succession, and to each many amendments are offered, some of which are adopted without any consideration of their effect upon the symmetry of the whole. Debate is practically unlimited, and amendment is thrust in upon amendment. Besides, they have all the vanity of the Spanish race, and their very weakness renders them exceedingly irritable and unnecessarily self-asserting. By appeals to these passions, and in the hurry and confusion of debate, many absurd, some dangerous, and even insulting, propositions have been inserted.

The 11th article was under consideration on the 29th April, or rather the amendment proposed by the Government. Dr. Carlos Martin proposed to amend still further by striking out the words "both the contracting parties" and inserting "Colombia," and thus excluding our country from being a party to the treaties to be made with foreign powers on the point of immunity of merchant vessels within the canal limits. Dr. Martin argued in favor of his amendment that it was not safe to trust the United States with participation in such treaties. Tapata, secretary for foreign affairs, replied that the amendment implied want of confidence in the United States, and that they had a clear right to be parties in any treaty referring to the canal, especially in those by which they yielded belligerent rights. Notwithstanding, the Senate approved Dr. Martin's amendment, and the 11th article as amended and adopted reads as in the copy hereto annexed.

I immediately wrote to Señor Tapata that if that amendment stood as the voice of Colombia, the treaty, in my judgment, would be immediately rejected at home; that I considered it in the light of a denial of just and necessary right, and of a deliberate vote of want of confidence in the United States, and declined any further consultation or conference on the subject of the canal while that obnoxious measure stood as the vote of the Senate. I also took some pains to let this determination come to the ears of the senators, and on the 3d of this month I was assured by several senators who voted for it that it was a mistake and would be corrected. I wait, however, to see it done, as I have little faith in the word of any of these gentlemen.

On the 30th of April the Senate adopted a supplemental article, a copy of which I attach, on the subject of the passage of men-of-war of the guaranteeing nations through the canal.

On the 3d of May the Government opened its views to the Senate on the financial articles 12 and 13 of the original treaty. Their mouthpiece on the occasion was Señor Camacho Roldan, secretary of finance. His proposition was to release all forms of participation of profits, &c., as provided in these articles, and in lieu of them to reserve to Colombia a single specific charge on tonnage, at the rate of 30 cents per ton for the first twenty years, and 40 cents per ton afterward, leaving all other sources of revenue free to the enterprise of the canal.

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After a very able speech from Roldan, lasting two days, and some other debate, the proposition was adopted. Whether it will finally stand, I do not know.

Nothing appears fixed simply because it has been adopted, and it is very likely that, in final review of their entire action, the Senate may recede from some of their amendments. I do not like the supplemental article, of which a copy is attached. There will be perpetual danger of collision, notwithstanding the treaties, and it will be a grave question whether European nations will adopt such treaties, and complicate themselves to the extent required. But *until* they do, it leaves the United States in possession of the exclusive privilege, and if they do enter into treaties, the additional security of their guarantee of immunity and neutrality will diminish the risk already assumed by the United States, and to that extent there is some compensation.

The treaty, as you are aware, is now on second reading in the Senate. The third reading will be final, and when their action is complete it passes to the House, which will not agree to any very absurd amendment. As things stand, it will probably be advisable for the Senate of the United States to wait the action of these people, as the whole scheme and plan of the existing treaty may be modified.

S. A. HURLBUT,
Minister Resident United States America.

Article 11 as modified and adopted by the Senate 29th April, 1870.

On their part the United States of America guarantee, first, the sovereignty of Colombia over the Isthmus of Panama and the territory in which the canal may be constructed; and, secondly, that the canal, with its dependencies and appurtenances, shall remain safe and neutral in the terms and to the extent hereafter expressed, and shall be exempt from all hostility on the part of any foreign nation or power; and to this end the United States of America constitute themselves allies of the United States of Colombia to aid them in repelling any attack or invasion upon the work and property above guaranteed; it being well understood that the expense caused by such defense shall be at the sole cost of the United States of America; and that the United States of Colombia will, to the extent of their ability, defend the said canal and its appurtenances as part of its territory.

The United States of Colombia reserve to themselves the right of passing through the canal their ships of war, troops, and munitions of war at all times, and concede the same rights to the United States of America; but said canal shall be closed to the flag of all nations which may be at war with either one or the other of the parties contracting, except in the case provided for in the following clause. It being the interest and purpose of the contracting parties that, so far as possible, the said canal shall be a safe and privileged channel for the lawful commerce of all nations, it is hereby declared that neither the United States of Colombia nor the United States of America, in case of war with any other nation, will exercise the belligerent rights of excluding from the canal, of capture, blockade, or detention of merchant vessels of such hostile nation or nations within the limits of the canal, or in its harbors, ports, or dependencies, or in the open sea adjacent, within a distance hereafter to be determined. But it is to be distinctly understood that the benefits of the stipulations in this clause expressed shall extend to the mercantile marine of those nations only which by means of treaties entered into [1] *with Colombia* shall guarantee the sovereignty of Colombia over the Isthmus of Panama and the territory in which the canal shall be constructed; and the immunity and neutrality of the canal, its ports, harbors, and dependencies and the adjacent open sea; and shall also concede reciprocally the same rights of exemption from blockade, capture, and detention within the limits aforesaid, on the same conditions and to the same extent to the merchant vessels of the United States of America and the United States of Columbia.

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[1] Original after "with"—"both the contracting parties"—amended by Dr. Martin by striking out this last phrase and inserting "Colombia."

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Supplemental article to follow article 11.

In case of war between any of the powers which shall have guaranteed the sovereignty of Colombia over the Isthmus and the territory mentioned in the preceding article, and also the immunity and neutrality of the canal, or in case of war between such guaranteeing powers and either of the present contracting parties, the transit through the canal of ships of war, troops, and munitions of war, of the belligerents shall remain open, notwithstanding such hostilities; but no hostile act shall be done or committed in the said canal, its ports, harbors, and dependencies, nor in the open sea adjacent, within the distance hereinafter to be determined, which shall in no case be less than three marine leagues. The canal shall be closed against the ships of war of all nations which shall not have given the guarantees referred to in this article, at all times when they may be at war with either of the contracting parties. Any infraction of this clause shall be considered as an attack upon the immunity and neutrality of the canal.

Adopted by the Senate April 30, 1870.

Mr. S. A. Hurlbut to Mr. Fish.

No. 23.] LEGATION OF THE UNITED STATES,
Bogota, May 16, 1870.

SIR: The Senate of Colombia has modified article 12 by reserving as the share of Colombia 40 cents per ton for the first twenty years, and 50 cents per ton for the remaining term. When they come to the final debate, I shall ask for reduction to 25 cents for the whole term. This modification is in the place of all other participation of profits. The second reading will close in the Senate in ten days.

S. A. HURLBUT,
Minister Resident United States of America.

Mr. Hurlbut to Mr. Fish.

No. 26.] BOGOTA, *June 3, 1870.*

SIR: I inclose with this a printed copy of the Spanish original text, and the amendments made by the Senate. The treaty is now before the House, and it is impossible to say what their action will be. I am endeavoring to organize the friends of the measure so as to bring it more nearly to the original, and have some hope that it will be done. The changes made are very great; most of them I hope will be defeated; but the radical changes in articles 11 and 12 in some form and amount will be insisted on.

Treaty for the construction and regulation of an interoceanic canal across the Isthmus of Panama, or Darien, and modifications adopted by the Senate in the discussion of the same treaty before closing the second debate on the ratification.

Whereas the construction of a canal between the Atlantic and Pacific Oceans across the isthmus uniting the two Americas, situated within the jurisdiction of the United States of Colombia, is es-

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sential to the prosperity and well-being both of the United States of America and of the United States of Colombia, as well as to the commercial interests and civilization of the world: Therefore the United States of America and the United States of Colombia have agreed to enter into a treaty for the purpose of facilitating and securing the great objects above expressed, and for that purpose have appointed their respective plenipotentiaries; that is to say, the President of the United States of America has appointed Stephen A. Hurlbut, minister resident of the United States of America within the United States of Colombia; and the President of the United States of Colombia has appointed Justo Arosemena and Jacob Sanchez; who, having first exchanged their respective powers in due form, have agreed upon the following articles:

ARTICLE I.

The United States of Colombia consent and agree that the United States of America shall make, or cause to be made, the necessary explorations to determine the practicability of such canal, and the United States of America agree to make such explorations, and if the work shall be found practicable, to cause the same to be surveyed and laid out, with all its dependencies, accessories, and appurtenances, and other constructions of every sort necessary for the successful use of the same, either on the land or in the water, within the jurisdiction of the United States of Colombia, and to adopt a plan of construction, and to make full and detailed estimates of the same, and for such purposes to employ and use within the territorial limits of the United States of Colombia all and any civil or military officers, agents, employés, and workmen, and also

Adopted.

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such vessels of war and transports as may be necessary.

The land forces, however, shall not exceed five hundred men, without first having obtained the express consent of the United States of Colombia. All persons employed in such service, whether military or civil, while within the jurisdiction of the United States of Colombia, shall observe the existing laws of that country.

ARTICLE II.

As soon as the detailed surveys shall have been completed and the line of the canal established, the President of the United States of America shall certify the same to the President of the United States of Colombia, and shall also forward duplicates of the maps, plans, and accompanying descriptions; and such maps, plans and descriptions shall be deposited in the archives of both governments.

The route selected and the plans proposed may afterward be varied, if required by the United States of America, of which variation the Government of Colombia shall be at once fully informed.

It is, however, expressly provided that said canal shall not be constructed on the route of the Panama Railroad without first obtaining the consent of the company owning said railroad.

Modification of Article II.

As soon as the detailed surveys shall have been completed and the line of the canal established, the President of the United States of America shall certify the same to the President of the United States of Colombia, and shall also forward duplicates of the maps, plans, and accompanying descriptions; and such maps, plans, and descriptions shall be deposited in the archives of both governments.

The route selected and the plans proposed may afterward be varied, if required by the United States of America, of which variation the Government of Colombia shall be at once fully informed.

It is, however, expressly provided that said canal shall not be constructed on the route of the Panama Railroad, without first obtaining the consent of the company to which the management of said railroad has been granted.

ARTICLE III.

Nothing contained in the two preceding articles shall be understood to mean that the United States of Colombia will forbid other explorations within her territories which may be undertaken for the same purpose of determining the practicability of an interoceanic canal; but only that they will decline to make any concession whatever for the excavation of such

Adopted.

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canal to any except to the United States of America, until the latter party shall have declared that they consider the work impracticable, or the term of three years, expressed in Article XXIV, shall have expired without the United States of America having declared their determination to commence the work.

ARTICLE IV.

The United States of Colombia agree to grant, set apart, and secure for the work of the canal and its dependencies and appurtenances all the territory, including sea and tributary waters, which may be selected for this object and shall be necessary; and also grant the power to the United States of America to take any lands owned by private individuals which it may become necessary to condemn, yet making full compensation therefor and following the course prescribed by the laws. But in determining the amount of indemnity the enhanced value which may accrue to said lands thus condemned, by reason of the opening of the canal, shall not be taken into account.

Modification of Article IV.

The United States of Colombia agree to grant, set apart, and secure for the work of the canal and its dependencies and appurtenances all the territory, including sea and tributary waters, at the request of the enterprise, and the latter may for this purpose ask for such lands belonging to private individuals as may be necessary, and such grants shall be decreed by the authorities of Colombia, and shall take effect (after compensation has been made) in accordance with the constitution and laws of the country.

The government of the United States of Colombia expressly reserves to itself the right of laying, or of permitting to be laid, cables for interoceanic telegraphic communications, with the privilege of extending them into the bed of the canal or the adjacent lands, and it may also use the ports and lands for such purposes as may be indispensable to the working of the cables.

ARTICLE V.

The United States of Colombia also grant in aid of the projected work and in favor of the enterprise, two hundred thousand hectares, that is to say, four hundred and ninety-four thousand two hundred and twenty acres, of the unappropriated lands of the nation, which may be found uninhabited and uncultivated, which lands the

Modification of Article V.

The United States of Colombia also grant in aid of the projected work and in favor of the enterprise, two hundred thousand hectares, that is to say, four hundred and ninety-four thousand two hundred and twenty acres, of the unappropriated lands of the nation, which may be found uninhabited and uncultivated, which two hun-

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United States of America may designate wherever they may be found within the limits of the State through whose territory the canal shall be opened.

The national vacant lands which may be found bounding on either bank of the canal shall be surveyed and divided into lots of equal dimensions, whose front on the canal shall not exceed three kilometers, that is to say, three thousand two hundred and eighty yards and eight hundred and ninety-nine-one-thousandths of a yard; every alternate lot of which is reserved for the United States of Colombia. The said lots shall be equally divided between the two contracting parties in such a manner that neither shall hold contiguous lots, nor either the two first lots at either extremity of the canal. Either government shall have the full power of free disposal of the lots which may be assigned to it, but always subject to the right of way for the canal and its appurtenances. The government of the United States of America shall have the right to select the first lot to commence the division. All the lands hereby granted which shall not have been sold to private individuals or retained as necessary for the canal, at the end of twenty years from the completion of the work, shall become the absolute property of the United States of Colombia, without any claim for improvements or for any other cause. The national vacant lands comprised in the belt of country in which the canal may be opened are hereby granted in preference to all other claimants for the object of this treaty, and the Government of the United States of Colombia binds itself to abstain from making any adjudications of such lands in any place where the canal may possibly be made, until the selection provided for in this article shall have been made.

dred thousand hectares the enterprise may designate where it may think proper, and wherever there may be such lands within the limits of the State through whose territory the canal shall be opened.

The two hundred thousand hectares of unappropriated lands already mentioned, shall not be granted in continuous territory, but in lots, each of which shall measure not more than three kilometers on each side, if situated on the banks of the canal; nor more than ten kilometers on each side, if its situation shall be distant from said banks. Between every two lots there shall remain a lot of equal extent, which the Government of the United States of Colombia reserves to itself. The said lots shall be equally divided between the two contracting parties in such a manner, that neither shall hold contiguous lots, nor either the two first lots at either extremity of the canal. Either government shall have the full power of free disposal of the lots which may be assigned to it, but always subject to the right of way for the canal and its appurtenances. The Government of the United States shall have the right to select the first lot to commence the division. All the lands hereby granted which have been sold to private individuals, or retained as necessary for the canal, at the end of twenty years from the completion of the work, shall become the absolute property of the United States of Colombia, without any claim for improvements or for any other cause. The belt of vacant lands through which the line of the canal may pass is hereby granted in preference to all other claimants for the object of this treaty; and the Government of Colombia shall abstain from making grants of vacant lands in the localities through which said line may pass, until this be fixed in the plans which shall

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be communicated to the Government of Colombia in accordance with the foregoing Article II.

PARAGRAPH I.

The vacant lands which are granted to the enterprise by this article shall be given as it solicits them, after the legal formalities established for these cases, it being the duty of the company to prove their quality of vacant lands, to measure them and to prepare the respective plans. The republic is in no case obliged to dispossess occupants and to guarantee the vacant lands awarded to the enterprise. [La republica no queda obligada en ningun caso à la eviccion y saneamiento de las tierras baldias que se adjudiquen á la empresa.]

PARAGRAPH II.

The United States of Colombia reserve to themselves upon the wild lands of which this article treats all the rights which by the law of May 15, 1868, "in relation to the working of mines and coal-beds, for the account of the nation," they have reserved to themselves in the vacant lands which may be awarded for any reason to private individuals.

ARTICLE VI.

While the present treaty remains in force, the United States of Colombia bind themselves not to open, or permit to be opened, any other interoceanic canal nor any other railroad across their territory from the Atlantic Ocean to the Pacific Ocean, without having first obtained the express assent of the United States of America.

Modification of Article VI.

The following paragraph is subjoined to the above article:

The United States of America pledge themselves neither to solicit, admit, nor support any grant which may have for its object the digging of an interoceanic canal across the American continent outside of the territory of the United States of Colombia, while the present treaty remains in force, without having first obtained the express consent of the United States of Colombia.

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ARTICLE VII.

The entire expenditure which may be incurred in the exploration, surveying, construction, and maintenance of the projected canal, together with its ports, locks, harbors, bays, warehouses, wharves, docks, and in general all the dependencies and appurtenances necessary for the use of said canal, including also such compensation as may be required to be paid for private property, and also the compensation which may become due to the Panama Railroad Company (if the event occur), in conformity with the contract entered into with said company by the Government of Columbia and approved by the Congress on the fifteenth of August, anno Domini eighteen hundred and sixty-seven, shall be payable and paid by the United States of America. The grants contained in the fourth and fifth articles of this treaty shall remain in favor of the United States of America, but solely for the purposes of this treaty.

Adopted.

ARTICLE VIII.

The United States of America shall construct or cause to be constructed, said projected canal (if found practicable), together with the appurtenances, so that it may be adapted for the passage of vessels of all classes not exceeding five thousand tons, and may employ such superintendents, engineers, mechanics, artisans, and laborers or other employés as may be necessary for the purpose. They may also maintain the naval and military force in their judgment necessary for protection, the latter of which shall at no time exceed the number of one thousand men, without first obtaining the express consent of the United States of Colombia. The said force shall be withdrawn by the United States of

Modification of Article VIII.

The United States of America shall construct, or cause to be constructed, said projected canal (if found practicable), together with its appurtenances, so that it may be adapted for the passage of vessels of all classes not exceeding five thousand tons, and may employ such superintendents, engineers, mechanics, artisans, and laborers, or other employés as may be necessary for the purpose. The military force which may be necessary to protect the work on the canal shall be furnished by the United States of Colombia, unless they prefer that the United States of America should furnish it. The expense of keeping said force shall in either case be defrayed by the United States of America. In case that

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America as soon as the canal is prepared for service, if the Government of Colombia shall so request. The United States of America agree that the superintendents, engineers, mechanics, artisans, laborers, and other employés, as well as the naval and military forces destined to protect the work, shall observe the then existing laws of the United States of Colombia.

If the United States of America shall prefer that any portion of the land forces employed for the protection of the work should be furnished by the United States of Colombia, it shall be so done upon the request of the Government of the United States of America, but the pay and support of said troops so furnished shall be at the expense of the enterprise, according to the then existing rates allowed to similar troops by the laws of Colombia.

the United States of America furnish the force, they shall withdraw it as soon as the canal is in working order, if the Government of the United States of Colombia shall require it. The United States of America guarantee that the superintendents, engineers, mechanics, artisans, laborers and other employés shall obey the laws which are in force in the United States of Colombia, and that they shall consequently yield like submission and obedience to the civil authorities.

ARTICLE IX.

The United States of America shall have power to erect and maintain yards and docks for the repair and supply of their ships at the harbors at each end of the canal, and to maintain within the limits of such yards and docks a sufficient police force to protect the public property within the same, not exceeding, however, two hundred men, without the express consent of the Government of Colombia.

Adopted.

ARTICLE X.

As soon as the canal, its dependencies, and appurtenances shall be completed, the entire possession, inspection, direction, and management of the same shall appertain to the United States of America, and shall be exercised by them without any interference from any source, but without any right of jurisdiction over the territory or its inhabitants. The United States of Colombia shall retain their polit-

Modification of Article X.

Adopted with the addition of the following paragraph:

In the case of this article, as well as in that of Article VIII, the military force to which those provisions refer shall act under the direction of the Colombian authorities, and with absolute subjection to them.

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ical sovereignty and jurisdiction over the canal and adjacent territory, but will not only permit, but do hereby guarantee to, the United States of America, in conformity with the constitution and laws of Colombia, the peaceable and undisturbed enjoyment, administration, direction, and management of the canal, as already stated. But this guarantee in no respect differs from that which is conceded by the laws of Colombia to all persons and all interests within its territory, and if the enterprise of the canal shall require any extraordinary public force in order to obtain more complete security, it will be furnished when requested, but at the expense of the enterprise.

ARTICLE XI.

The United States of America on their part guarantee to the Government of Colombia that the canal, its dependencies and appurtenances, shall be free and exempt from all hostile acts on the part of any other nation or foreign power, and for these purposes the United States of America constitute themselves an ally of the United States of Colombia to aid in repelling any attack or invasion upon the properties, rights, and privileges above guaranteed, it being well understood that such expenses as may thus be incurred by the United States of America shall be solely discharged by that power; and also that the United States of Colombia will defend the said canal and its dependencies as part of her territory to the extent of her ability. Both of the parties contracting in this treaty reserve to themselves the right of passing their ships of war, troops, and munitions of war through the canal at all times, free of all charge, impost, or duty; but the said canal shall be closed against the flag of all nations which may be

Modification of Article XI.

On its part the Government of the United States of America guarantees: 1st. The sovereignty of Colombia over the Isthmus of Panama and the territory in which the canal may be dug. 2d. That the canal, with its dependencies and appurtenances, shall be free and neutral in the manner hereinafter expressed, and that it shall be exempt from all hostility on the part of any other nation or foreign power. To this effect the United States of America become allies of the United States of Colombia, to aid them in repelling any attack or invasion upon the properties, rights, and privileges above guaranteed, it being well understood that such expenses as may be thus incurred by the United States of America shall be discharged by that power exclusively; and also that the United States of Colombia will defend the said canal and its dependencies as part of their territory to the extent of their ability.

The United States of Colombia reserve to themselves the right of passing through the canal their ves-

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at war with either of the contracting parties. No troops shall be allowed to pass through the canal with arms in their hands, except those of the United States of Colombia moving under constitutional authority, and those vessels of war of nations at peace with both contracting parties. With the exceptions herein named, the canal shall be open for the use of all nations and every kind of lawful business without distinction.

sels of war, troops, and munitions of war at all times, free of all charge, impost, or duty, and they extend the same right to the United States of America with respect to the vessels of war, troops, and munitions of war belonging to that nation; but said canal shall be closed to the flags of nations which are at war with either of the contracting parties, except in the case provided for in the following clause:

It being the intention and object of the contracting parties that the canal may become, as far as possible, a safe and privileged highway for the lawful commerce of nations, it is agreed that neither the United States of Colombia nor the United States of America, in the case of war with any other nation, shall exercise, as belligerents, the right of excluding from the canal, capturing, blockading, or detaining the merchant vessels of the hostile nation within the limits of the canal or in its ports, bays, or dependencies, or in the adjacent sea within the distance hereafter to be fixed; it being well understood that the benefits of the stipulations specified in this cause shall be extended only to the merchant marine of such nations as shall, by treaty, guarantee the sovereignty of Colombia over the Isthmus of Panama and the territory in which the canal shall be dug, and the immunity and neutrality of the canal, its ports, bays, and dependencies, together with the adjacent sea, and reciprocally grant the same rights of exemption from capture, blockade, and detention within the limits aforesaid, on the same conditions and throughout the same extent, to the merchant vessels of the United States of Colombia and the United States of America.

Both the contracting parties pledge themselves to offer and grant the advantages, rights, and exemptions stipulated in this arti-

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cle, the twelfth and the twenty-fifth, to such nations as shall furnish their guarantee, on the same terms as the United States of America, in favor of the sovereignty of Colombia over the Isthmus of Panama and the territory in which the canal shall be dug, in favor of the freedom and neutrality of the canal, its dependencies, and appurtenances, and the adjacent seas.

New article to be inserted after Article XI, in this form:

ARTICLE .

In case of war between any of the powers guaranteeing the sovereignty of Colombia over the isthmus and territory mentioned in the foregoing article, and guaranteeing the freedom and neutrality of the canal, or between one or more of said guaranteeing powers and one of the present contracting parties, passage through the canal shall remain free during the continuance of hostilities to the vessels of war, troops, and munitions of war of the belligerents; but no act of hostility shall be committed in the ports and dependencies of the canal or the adjacent sea, within the distance which shall hereafter be determined, and which shall not be less than three nautical leagues. The canal shall be closed to the vessels of war of those nations which shall not have furnished the guarantee referred to in this article whenever they may be at war with either of the contracting parties.

The infraction of this clause shall be considered as a violation of the freedom and neutrality of the canal.

ARTICLE XII.

The United States of America shall have power to establish, and from time to time to change and

Modification of Article XII.

The United States of America shall establish, and from time to time change and alter, a tariff of

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alter, a tariff of charges on merchant vessels loaded or unloaded, and upon vessels of war of other nations than the United States of America and the United States of Colombia, passing through the canal, according to the tonnage of such vessels, and upon the basis of perfect equality at all times and among all nations, with no other distinctions than are contained in the preceding article. The tonnage of such vessels shall be determined according to the rules for ascertaining tonnage declared by the laws of the United States of America.

The United States of Colombia shall receive as their proportion of such tonnage duty, or impost, a fraction of a dollar for every ton which the vessels passing through the canal may measure, excepting vessels employed in the service of the canal, and the vessels of war of the United States of America and of the United States of Colombia, in manner following, that is to say, ten cents for each ton during the first ten years after the canal shall have been opened for business; and five cents additional for every five years thereafter until the maximum of forty cents per ton shall be reached: *Provided, however*, That at no time shall the said proportion belonging to the United States of Colombia exceed ten per centum of the tonnage duty or impost levied for the benefit of the canal on each ton passing through the same.

The United States of America shall also have power to fix, and from time to time to change and alter, the rates of transportation for passengers through the said canal; and the United States of Colombia shall receive as their share of the same the sum of two dollars for every cabin passenger, and one dollar for every steerage passenger transported through said canal. The specific amounts

charges on merchant vessels, loaded or unloaded, and upon vessels of war of other nations than the United States of America and the United States of Colombia, passing through the canal, according to the tonnage of such vessels, and upon the basis of perfect equality at all times and for all nations, with no restrictions save that contained in the preceding article. The tonnage shall be determined according to the laws now in force in the United States of America for ascertaining tonnage, and the proportion of tax shall never be less than that of the participation which is hereafter granted to the United States of Colombia.

The United States of Colombia shall have a share of this tonnage duty or impost, receiving for every ton measured by the vessels which pass through the canal, forty cents during the first twenty years after the opening of the canal to commerce, and fifty cents during the remainder of the duration of the privilege.

New article to be inserted after Article XII:

ARTICLE .

Colombian vessels exclusively engaged in the Colombian coasting trade shall only be required to pay fifty per cent. of what is paid by others, according to tariff, to the enterprise of the canal; and in consequence, only one-half of the sum stipulated as the general rule in Article XII of this treaty shall be paid by them to the Government of Colombia.

There shall likewise be made by the enterprise and the Government of Colombia, respectively, a reduction of twenty-five per cent. of the duties imposed by the general tariff in favor of vessels of all kinds which sail from a port of Colombia for a foreign port, and

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above set forth as the proportional share of the United States of Colombia shall be paid at such times and in such form as may be directed by the Government of Colombia, upon reasonable notice; the said government hereby reserving to itself the right to establish and maintain proper officers on the line of said canal with sufficient authority to collect from the management of the enterprise the above-mentioned specific imposts; but without any interference in the management of the canal.

ARTICLE XIII.

The United States of America shall also have power to establish, and from time to time to change and alter, a tariff of charges upon cargoes and freights of vessels passing or to pass through the canal; and also for the use of docks, wharves, warehouses, harbors, and other works incidental to the use of the canal.

The said tariff upon cargoes shall be estimated *ad valorem*, that is to say, upon the value of the goods and merchandise at the port of shipment, and at the same rate or proportion of value for every class of merchandise, and equal among all nations; and if the value at the port of shipment cannot be fairly ascertained, or there be no port of shipment, then, on the fair value of the same at the mouth of the said canal. Special rates may, however, be charged on gold. silver, platina, and precious stones, but no distinction shall be made in favor of any nation, nor against any other.

The mails and correspondence of all countries shall pass through the canal without charge.

Of the entire amounts received from imposts and duties for transportation through the canal (other than the tonnage and passenger charges heretofore provided for), whose cargo consists entirely of Colombian products.

Modification of Article XIII.

The United States of America may establish, and from time to time change and alter, a tax on the passengers, and also on the cargoes of the vessels passing or to pass through the canal; and also for the use of docks, wharves, warehouses, harbors, and other works incidental to the use of the canal. The tariff of charges upon the cargoes of vessels shall be estimated *ad valorem*, that is to say, upon the value of the goods and merchandise at the port of shipment, and at the same rate or proportion of value for every class of merchandise; and if the value at the port of shipment cannot be fairly ascertained, then, on the fair value of the same at the mouth of the said canal. Special rates may, however, be charged upon gold, silver, platina, and precious stones. All the charges above mentioned shall be made without any distinction in favor of one nation or against another.

The United States of America, or its assignee, conformably to this treaty, shall have full power and authority to define the time, place, and mode of payment of the several charges and imposts, dues and tolls, levied and imposed for the benefit of the canal; and,

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the United States of Colombia shall receive five per centum for the first twenty years, and three per centum for the remainder of the term of this grant, as its share and proportion, which shall be paid at such times as the Government of Colombia may direct, upon full and reasonable notice. The United States of America, or its assignee, conformably to this treaty, shall have full power and authority to define the time, place, and mode of payment of the several charges and imposts, dues and tolls, levied and imposed for the benefit of the canal, and to enforce collection and payment of the same in such manner as they may choose. The books and other evidences of the receipts from the business of the canal shall be at all times accessible to the proper officers of the Government of Colombia, and full and complete returns of the receipts of said canal shall be made to such officers as may be appointed, in such manner as may be required by the Government of Colombia, on proper and reasonable notice. All payments required by this treaty to be made by the canal to the Government of Colombia shall be made at the principal office on the line of the canal, without any deduction except as provided in Article XVII.

ARTICLE XIV.

If the proposed canal shall be constructed east of the line defined in the second article of the charter of the Panama Railroad Company, bearing date the fifth day of July, eighteen hundred and sixty-seven, and approved by the Congress of Colombia on the fifteenth of August, eighteen hundred and sixty-seven, and by reason of the opening of the canal and without other causes, the business and profits of said Panama Railroad Company should so diminish that in order to enforce collection and payment of the same, they shall have power to prevent vessels, passengers, merchandise, and goods which shall not have paid their dues, from leaving the canal or its warehouses, deposits, ports, and other appurtenances.

PARAGRAPH.

The Government of the United States of Colombia shall have power to maintain a permanent commission of its agents for the purpose of measuring the tonnage of vessels.

Modification of Article XIV.

Instead of this article and the fifteenth, the following:

ARTICLE XIV.

If, by reason of the opening of the canal, the Panama Railway shall be destroyed or the business and receipts of said road shall diminish to such an extent that the company shall be unable to pay to the United States of Colombia the whole or a part of the sum of two hundred and fifty thousand dollars,

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they should become unable to pay to the United States of Colombia the sum of two hundred and fifty thousand dollars (as they now do), after first paying their running expenses and necessary repairs, and also a dividend of five per cent. on ten millions of dollars, estimated cost of the road, then the enterprise of the canal shall make good the difference between said sum of two hundred and fifty thousand dollars and the amount actually received by the Government of the United States of Colombia from said railroad company, or may, if it shall so elect, pay the entire amount and be substituted in the place of the United States of Colombia, to recover the same from said railroad company. It is, however, well understood that the said canal enterprise shall not be held to assume either of the obligations above stated, unless the tribunal of arbitrators established in Article XXII shall have decided that the events on which said obligations depend, as recited in this article, have, in fact, taken place.

which it now pays, after having covered its expenses and necessary repairs, as also the dividend of five per cent. on ten millions of dollars, at which sum the cost of the railway is estimated, then the enterprise of the canal shall make good, in the first case the whole, and in the second the difference between the said sum of two hundred and fifty thousand dollars and the amount actually received by the Government of the United States of Colombia, or else a sum which, if placed at interest at the rate of five per cent. per annum, would produce, as annual interest, the sum of two hundred and fifty thousand dollars.

It is understood that the United States of America are substituted for the United States of Colombia, in the right of appointing the umpire mentioned in Article 2, of the contract made August 15, 1867, with the said railway company, as well as in that of receiving one-half of the indemnity assigned by the said article to the United States of Colombia.

PARAGRAPH.

The stipulations of this treaty in no wise exempt the said Panama Railway Company from the obligations imposed upon it by the said contract in favor of the United States of Columbia.

ARTICLE XV.

Omitted on account of having been included in the foregoing modification made to Article XIV.

ARTICLE XVI.

For the more complete understanding of the articles of this treaty which speak of sums of money or refer to the completion of the canal, it is declared—

First. That the money in which said amounts are to be estimated

Modification of Article XVI.

For the more complete understanding of the articles of this treaty which speak of sums of money or refer to the completion of the canal, it is declared—

First. That the money in which said amounts are to be estimated

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shall be that of the United States of Colombia or its equivalents, whose unit is the *peso*, equal to the French coin of five francs.

Second. That the canal shall be considered as concluded and finished from the time at which the first vessel charged with tolls shall pass from ocean to ocean, although some portions of the work or its accessories may not be fully completed.

shall be that of the United States of Colombia, whose unit is a piece of silver with twenty-five grammes of weight, at the law (rate?) of nine hundred-thousandths.

Second. That the canal shall be considered as concluded and finished from the time at which the first vessel charged with tolls shall pass from ocean to ocean, although some portions of the work or its accessories may not be fully completed.

Article XVII.

It being the intention of the Government of Colombia to cede, as it hereby does cede, a certain proportion of its share of moneys derived from the canal, according to the preceding articles, for the benefit of the State or States through whose territory the interoceanic canal may pass, the government of such State or States may receive directly from the managers of said canal that portion which may be ceded as above stated. This portion shall consist, at all events, of the tenth part of that which is received by the United States of Colombia, and of another tenth part, making a fifth part in all, if such State or States shall cede to the Union, to be administered according to article seventy-eight of the Colombian constitution, the territory comprised between the canal and a belt of fifteen kilometers in depth on each side throughout its whole extent.

In the same proportion the State of Panama shall receive her share of the indemnity which may belong to the United States of Colombia, in case of the opening of the canal within the belt of country covered by the contract with the Panama Railroad Company.

Modification of Article XVII.

Unchanged as far as the words "This portion shall consist," &c. Instead of the concluding part of the article, which commences, "This portion shall consist," &c., the article, as modified, concludes as follows: "This portion shall be fixed by a law of the Congress of the United States of Colombia, and shall be annually voted in the law making appropriations for estimated expenses."

Article XVIII.

The United States of Colombia will not impose any national duties or imposts, and will not permit

Adopted.

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any taxes, duties, or imposts to be levied by States, municipalities, or any other authorities whatever, upon the vessels, passengers, merchandise, moneys, or other articles which may pass through the canal from ocean to ocean (other than have heretofore been provided in this treaty); but such articles as are destined for use or consumption in the territory of the Republic of Colombia shall be subject to such duties and imposts as are or may be established by her laws.

Article XIX.

All articles of machinery and other materials and supplies, of whatever sort, necessary and required in the construction and maintenance of the canal, its dependencies and appurtenances, shall be introduced without any duties or imposts of any kind, and the said canal, with all its properties, appendages, and appurtenances, shall remain free from all taxation, imposition, or contribution, national, State, or municipal, during the term of the concession herein granted.

No taxation, contribution, or other burden shall be imposed by the laws or decrees either of the nation, or of a State, or municipal authority, upon the persons employed on said canal, or upon their private property, other or different in rate, manner, or amount from the taxation, contribution, or other burdens imposed upon other persons or property within the respective jurisdictions.

Adopted.

Article XX.

The rights and privileges herein specified shall continue for the space and term of one hundred years, commencing from the date at which the canal shall be opened for commerce, according to Article XVI. And at the expiration

Modification of Article XX.

After "appurtenances" the words "arsenals and docks" are inserted.

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of said term the said canal, with its entire properties, dependencies, and appurtenances, shall vest in absolute ownership and property in the United States of Colombia without any payment or indemnity whatever. The canal shall be maintained in good order and effective condition until it shall be delivered up as aforesaid. The United States of America shall retain to themselves whatever benefits or profits may have been received by them during the period herein expressed.

ARTICLE XXI.

Adopted.

The United States of America may by law transfer all its rights, privileges, franchises, duties, properties, and obligations, in relation to the exploration, surveying, construction, and maintenance of said canal, to any private citizen of said republic, or to an association or corporation created by law, and in such event the said citizen or corporation shall enjoy all the rights, properties, franchises, and privileges herein granted to the United States of America, and shall be subject to all the duties and obligations herein contracted to be done and performed by the United States of America; but such transfer shall not work a complete substitution of such individual or corporation into the place and stead of the United States of America. And the Government of the United States of America will hold itself bound, as trustee for the Government of the United States of Colombia, to enforce the fulfillment of the provisions of this treaty upon the person or corporation which shall derive title from it under such transfer, so far as such provisions shall apply to such person or corporation.

The person or corporation to whom such transfer shall have been made shall hold and enjoy

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the properties, rights, immunities, and privileges hereinbefore expressed in the said canal and its dependencies and appurtenances, subject, however, to the reservations hereinbefore set forth in favor of the United States of Colombia for the term herein mentioned. The political obligations contracted between the United States of America and the United States of Colombia, specified in Articles XI and XXV, shall remain permanent and irrevocable.

ARTICLE XXII.

If any differences of opinion shall arise between the said person or corporation and the United States of Colombia, in relation to the true meaning or the proper execution and fulfillment of any of the clauses of this treaty, such differences shall be decided by a tribunal composed as follows: Each party shall nominate one arbitrator, and the two arbitrators shall nominate a third person as an umpire, to decide those cases in which they shall not agree. The tribunal shall hold its sessions in the city of Bogota, and there shall be no appeal to either party from its decisions.

Adopted.

If either of the parties shall not make the appointment of an arbitrator within thirty days after being required so to do by the other party, or if a person shall be appointed as arbitrator who shall be unable or unwilling to accept the appointment, in that case the appointment shall be made by the Government of the United States of America. The expenses of the said tribunal shall be paid equally by the two parties.

If the two arbitrators named shall not agree in the choice of an umpire who will accept, the parties shall submit the decision of the questions arising to the arbitrament of some friendly govern-

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ment in the manner stipulated in the following clause:

Should any differences unfortunately arise between the United States of America and the United States of Colombia respecting the true intent and meaning of the provisions of this treaty, such differences shall be mutually referred to the arbitrament of some impartial friendly power, whose decision shall be final, and shall be fulfilled and performed.

Article XXIII.

Adopted.

In case that the United States of America shall make the transfer treated of in Article XXI, the privileges hereby granted shall cease and determine, and the Government of Colombia shall enter into the possession and gratuitous enjoyment of the canal and its appurtenances in the following cases, viz:

1. If the person or corporation in whose favor the transfer shall have been made shall alienate or lease the enterprise in favor of any foreign government.

2. If the said person or corporation shall co-operate in any act of rebellion against the Government of the United States of Colombia, the object of which shall be to withdraw from its authority and dominion the territory in which the canal be situate.

3. If, after the completion and opening of said canal, the transit of vessels through it shall be suspended for more than three years continuously, excepting the case of the acts of God, or of superior force, independent of the will of the said person or corporation.

It is well understood that the cases above enumerated of the lapse of the grant are among those which are within the jurisdiction of the tribunal established under the first part of Article XXII. The said tribunal shall

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be judges of the facts as well as of the law in all cases.

ARTICLE XXIV.

In addition to the cases set forth in the foregoing article, this treaty shall terminate and the rights granted under it shall lapse—

1. If the United States of America shall not execute or cause to be executed the explorations and surveys to which the first article of this treaty refers within the space of three years from the date of the exchange of the ratifications of this treaty.

2. If the work of excavating the canal shall not be commenced within the space of five days from the date of such exchange, provided the work shall be found practicable.

3. If the work shall not be completed within fifteen years from the date of its commencement.

The periods of time above mentioned shall be deemed to be interrupted, and to that extent prolonged, if any instance of superior force or of the act of God shall intervene to prevent the fulfillment of the same without the consent of those in charge of the undertaking.

And inasmuch as the United States of Colombia will be deprived of the right of making other grants in the same matter, and will suffer the injury consequent upon the not undertaking or executing the work of the canal during the period above expressed, the United States of America will make compensation for such injury in the sum of three hundred thousand dollars, Colombian money, if the present treaty shall lapse by reason of any of the causes expressed in this article.

Modification of Article XXIV.

Adopted without any variation, save the omission of the paragraph commencing, "And inasmuch as," &c.

ARTICLE XXV.

The United States of America and the United States of Colombia mutually agree to use all possible effort to obtain from other nations a guarantee in favor of the stipulations of immunity and neu-

Adopted.

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trality mentioned in Article XI, and also in favor of the sovereignty of the United States of Colombia over the territory of the Isthmus of Panama and that of Darien. And the United States of America for their part recognize and renew the stipulations in regard to the aforesaid guarantee of sovereignty contained in the thirty-fifth article of the treaty of the tenth of June, eighteen hundred and forty-eight, between the two nations. Those nations which, by treaties entered into with the present contracting parties, shall unite in the guarantee of the neutrality of the canal and of sovereignty over the territory, as herein before expressed and given by the United States of America, shall be relieved from tonnage and other imposts upon their ships of war either in full or to such extent as may be stipulated in such treaties.

ARTICLE XXVI.

The present treaty shall be approved and ratified by the President of the United States of America, with the advice and consent of the Senate of that nation; and by the President of the United States of Colombia, with the consent and agreement of the Congress of that nation, and the ratifications shall be exchanged in the city of Bogota within twenty months from the day of the date of the execution by the plenipotentiaries above named.

Adopted.

In faith of which we, the plenipotentiaries above named, have hereunto set our hands and seals this twenty-sixth day of January, one thousand eight hundred and seventy.

STEPHEN A. HURLBUT,
Minister Resident U. S. America.
[L. S.]

JUSTO AROSEMENA,
[L. S.]

JACOBO SANCHEZ,
Plenipotenciarios de Colombia.
[L. S.]

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The following, marked with the number XXVII, was adopted as a new article:

In case the United States of America, in the exercise of the power granted them by Article XXI of this treaty, transfer their rights, privileges, &c., to any private individual, or to any legally constituted association, it shall be the duty of such individual or association to keep in Panama a representative empowered to treat with the Government of the Union and of the State, and also with individuals, in regard to everything relating to the objects of the enterprise.

Office of the secretary of the senate of plenipotentiaries, Bogota, May 24, 1870.

The foregoing modifications have been adopted in the sessions in which this project has been discussed, from April 7, 1870, up to this date.

EUSTACIO DE LA TORRE N.,
Secretary.

Mr. S. A. Hurlbut to Mr. Fish.

No. 27.] LEGATION OF THE UNITED STATES,
Bogota, June 6, 1870.

SIR: I inclose in dispatch, No. 26, of June 3, a printed copy of Senate amendments to the canal treaty. I have since had a very long and full conference with the secretaries for foreign affairs and of finance. They will endeavor on the part of the administration to bring about the rejection of most of the Senate amendments in the House. Some, however, they insist on retaining. It is agreed that the eleventh article (Senate amendment) be so modified as to make the United States necessary parties in any negotiations with foreign nations relative to the canal. The principal in the said amendment of free transit at all times for the merchant vessels of guaranteeing nations will, undoubtedly, be retained.

The "new article after the 11th," in relation to transit of ships of war of guaranteeing nations, they also insist on retaining. I have informed them that it will be very distasteful to the United States, and will probably lead to the rejection of the treaty.

The twelfth article will, I think, be modified by allowing 25 cents per ton for the entire term, and in case the canal shall pay more than ten per centum *net revenue* on the capital invested, then Colombia to receive 10 per cent on excess. This is my proposition, and I think

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can be carried through. This allowance to be in full for everything. You will perceive a "new article after the 12th," giving special privileges to *Colombian* vessels, &c. This is, of course, directly in the teeth of the whole frame of the treaty, but if urged, as it seems to be popular, I have insisted that it be extended in principal to American vessels, and have furnished them the draught of an article giving a rebate or discount of 15 per cent. on tolls, &c., to vessels actually owned by citizens of either country, and lawfully sailing under their flag, passing from any one port of either of the countries to any other port in the same country through the canal, and a rebate of 10 per centum on any vessel, owned as aforesaid, sailing from any port in either country, wholly loaded with the products of said country. With our vast commerce to come between our Pacific and Atlantic coasts, such a concession will be extremely valuable. The treaty and amendments are now before a committee of the House, whose report may be expected next week. From conversations with the members of this committee and prominent members of the House, I should expect good results if I could have any faith in the promises of this people.

I regret to say that the truth is that the United States might fix almost their own terms if a rich company were ready to take the charter and to disburse handsomely to the doubtful members of either house; and if this treaty hangs fire, as I think it will, until next year, it will be advisable to organize an association. As it is, with the natural opposition of the French and English legations, with the very glittering promises of Mr. Lanauze, it is tolerably up-hill work to carry anything through such deliberative bodies as these.

I am, however, not without hope of defeating the administration and senate in the house on the "new article following the 11th" in relation to transit of ships of war of other nations.

S. A. HURLBUT,
Minister Resident United States of America.

Mr. S. A. Hurlbut to Mr. Fish.

No. 30.] LEGATION OF THE UNITED STATES,
Bogota, June 16, 1870.

SIR: I inclose herewith a translation of article 11 as finally adopted by the house of representatives. Article 12 has been modified so as to reduce the participation of Colombia to 30 cents for first twenty years and 40 cents for the remainder. This is still too high. I defer any remarks on the various amendments until after further action in the senate, to which the whole has this day been returned.

S. A. HURLBUT,
Minister Resident United States of America.

HOUSE OF REPRESENTATIVES.

Article 11, as adopted by that body on second reading.

On their part the United States of America guarantee to the Government of Colombia that the canal, its dependencies and appurtenances, shall be free and exempt from all hostility on the part of any other nation or foreign power, and for this purpose the

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United States of America constitute themselves allies of the United States of Colombia, to assist them to repel any attack or invasion upon the works and properties which are above guaranteed, it being well understood that the expenses which such defense may occasion to the United States of America shall be at their exclusive cost, and also that the United States of Colombia will defend to the utmost of their ability the said canal and its dependencies as part of its territory.

The United States of Colombia reserve to themselves the right of passing through the canal at all times their ships of war, troops, and munitions of war free from all burdens, tolls, or imports, and they extend the same right to the United States of America in respect to the ships of war, troops, and munitions of war pertaining to said nation; but the said canal shall be closed to the flag of all nations that may be at war with either of the contracting parties, except in the case provided for in the clause following. It being the intention and object of the contracting parties that, so far as possible, the canal shall be a safe and privileged highway for the legitimate commerce of the nations, it is hereby stipulated that neither the United States of America nor the United States of Colombia, in case of war with any other nation, will exercise the belligerent right of excluding from the canal, capture, blockade, or detention of the merchant vessels of the hostile nations within the limits of the canal, or in its ports, harbors, and dependencies, nor in the adjacent open sea within distance as may hereinafter be determined. It is, however, distinctly understood that the benefits of the stipulations in this clause specified shall extend to the merchant marine of those nations only which shall by treaty guarantee the sovereignty of Colombia over the Isthmus of Panama and the territory in which the canal shall be constructed, and the immunity and neutrality of the canal, its ports, harbors, and dependencies, and the open sea adjacent, and shall also concede reciprocally the same rights of exemption from capture, blockade, and detention within the limits aforesaid, with the same conditions and to the same extent to the merchant vessels of the United States of Colombia and of the United States of America. Both contracting parties hereby bind themselves to offer and concede the advantages, rights, and exemptions stipulated in this article, in the 12th and 25th, to the nations which shall furnish their guarantee in the same terms which the United States of America now do, in favor of the sovereignty of Colombia over the Isthmus of Panama and the territory in which the canal may be constructed, and also in favor of the immunity and neutrality of the canal, its dependencies and appurtenances, and the adjacent seas.

Paragraph.—The two contracting parties also agree to offer to the nations which shall unite with them in giving the guarantee aforesaid of sovereignty of the United States of Colombia over the Colombian isthmuses, and the neutrality and immunity of the canal, the following bases and conditions of regulations in relation to the passage of ships of war through the canal, that is to say: In case that war should unfortunately arise between either of the contracting parties and any one or more of such guaranteeing nations, or between such guaranteeing nations, the right of transit through the canal shall remain suspended as to the ships of war of such belligerents during the existence of hostilities, and in addition thereto no act of hostility shall be committed by such belligerents, in any form whatever, within the limits of the canal, its ports, harbors, and dependencies, nor in the open sea adjacent within the distance which hereafter may be determined.

But it is expressly stipulated that the benefits and advantages hereinbefore recited in the foregoing clauses shall be enjoyed by those nations only which shall furnish the guarantees above expressed, and which, by means of treaties with both contracting parties, shall accept the principles above expressed, and shall concede to the United States of Colombia and the United States of America the same exemptions therein expressed.

The passage of the canal in time of war shall be closed to the ships of war of all belligerent nations which shall not have given the guarantees of sovereignty of Colombia over the Isthmus, and the immunity and neutrality of the canal, its dependencies, appurtenances, and the adjacent seas.

Mr. S. A. Hurlbut to Mr. Fish.

No. 33.] LEGATION OF THE UNITED STATES,
Bogota, July 13, 1870.

SIR: I inclose with this dispatch Spanish copy of the law approving and modifying the canal treaty, and an English translation of the same,

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with an index pointing out briefly the changes proposed. There are many changes which are only the expression of the jealousy of a weak nation, and as such must be overlooked by a strong one.

In relation to the lands granted, it must be borne in mind that this nation never has surveyed its public lands, and is unable to do so. There are, however, no outstanding Spanish or other grants, and I think there will be little difficulty about titles. The obligation expressed in article 6 in relation to other interoceanic routes is very strong, and probably unwise to be entered into by the United States.

The clauses contained in articles 8 and 10, in relation to subordination of forces of the United States to Colombian law and Colombian functionaries, appear to me inconsistent with the dignity of the United States and with the proper discipline of the military force.

The additions made to article 11 are of primary importance and demand most serious and deliberate consideration. I have already had the honor to give you my views on this subject. The clause in relation to immunity of merchant vessels in time of war is my own in substance, and I think conforms to the true ethics of modern commercial intercourse.

The clause in relation to ships of war of guaranteeing nations, as limited by section 3, can be considered under several points of view:

1. Either the United States will adopt the idea of the original treaty, that the canal shall be in an American channel, practically controlled by the United States, as against the world, for all but purely commercial transit, as a necessary element of national security and power. In that event the modification referred to will be rejected. Or,

2. The United States may admit the policy of inviting the maritime nations to incur the same responsibility she has assumed, upon the conditions mentioned in the amended article. In such event the amendment will be accepted. Or,

3. The United States may make her own terms with the maritime powers as to this complicated question, by a new arrangement. On this point I am perfectly well assured that any agreement made between England, France, and North Germany which shall leave this country neutral in case of war with any of them and the United States will be accepted as a solution of the problem. They fear that in case of such a war they may be unwillingly dragged into it by having conceded to the United States alone the right of transit for ships of war, &c., at all times. They have no objections to the United States having this privilege, except so far as it tends to embroil them with other powers.

I think, as I have already written to you, that neither England, France, nor Germany will accept the obligations of defense of the canal, sovereignty of Colombia, and immunity of the territory, which are required as conditions precedent to the privileges given in the sections 2 and 3 of the amended article 11. The United States, in my judgment, before acting upon this treaty, should diplomatically ascertain and determine what will be the course of these nations on this question, and if a solution satisfactory to the great maritime powers can be arrived at, it will be satisfactory to this Government and people.

If the European maritime powers shall reject the proposition made, that rejection should be considered final, and both the United States and Colombia at liberty to act without reference to them in any way.

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My personal opinions are in favor of the ultra-American views of the matter, but I can see that other points in the negotiation will be wonderfully simplified by any accord arrived at by the maritime nations. In such case the influence of those governments will be strongly given to reduce the heavy burdens imposed on the financial success of the undertaking, both by reduction of the participation of Colombia and by aid in money markets. Article 12 establishes the new participation of Colombia in the profits on the basis of 30 cents per ton for twenty years, and 40 cents for the residue of the term. This is altogether too high. Merchants and capitalists ought to fix this rate, and whatever just and reasonable rate is finally offered by the United States will be accepted, especially if article 11 is amicably arranged. Fifteen, 20, or 25 cents, with a participation in profits in excess of 10 per cent, over capital invested, would be enough.

Articles 14 and 15 of the original treaty are struck out, and the amended article 14 inserted in lieu. This article is very badly framed, but means simply this: That Colombia values her interest in the Panama Railroad at $5,000,000, being the capital on which, at 5 per cent, she receives $250,000 annually. She concedes to the United States the half of the damages to be paid to the Panama Railroad, which belongs to her, and accepts from the canal, in case the Panama Railroad be destroyed or crippled by the opening of the canal, either the capital sum of $5,000,000 or a guarantee of the annual revenue of $250,000.

Article 20 is amended so as to make the "national docks and yards" revert to Colombia at the end of the concession. The engagement of protection and defense being perpetual, it would seem that the means to perform the engagement should be coextensive in duration. These are the principal points made by the amended treaty, and I have endeavored to submit them clearly. I can not but feel deep solicitude on the decision to be arrived at by the United States on the modification to the eleventh article. It will determine our policy on this continent for a long period. As an American citizen I should rejoice to see our supremacy in the affairs of the American continent fully recognized and fearlessly asserted. If this is done, however, both the Government and the people must be ready to bring every possible influence to bear on the next Colombian Congress. If any other course is determined on, involving tender of privileges to European powers, I sincerely hope we may be able to satisfy the wishes of this people by making the offer, and our own interests and advantage by having it rejected.

S. A. HURLBUT,
Minister Resident United States of America.

INDEX GIVING THE EFFECT OF THE MODIFICATIONS.

Modification 1st to Article II.

The only alteration is in the last line of the article, substituting "holding the privilege" for "owning."

Modification 2d to Article IV.

The last paragraph, in relation to telegraphic cables, has been added.

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Modification 3d to Article V.

In this a change has been made, lands are limited in dimensions, and the lots to be divided. This alteration is not of much consequence, although it increases the labor of surveying, &c. But the section limiting the responsibilities of Colombia to guarantee title needs consideration. It is but just to Colombia to state that this is the mode in which she deals with individuals who desire to purchase her waste lands.

Modification 4th to Article VI.

This second paragraph is a very strong limitation upon the United States in the place of the penalty of $30,000 provided in article 24 of the original treaty and dropped from this.

Modification 5th to Article VIII.

The second paragraph of this article has been changed, not for the better. This weak nation is so jealous of its prerogatives as to insert constantly a sort of claim to jurisdiction and command over troops of the United States. This modification and the *two succeeding* ones should be read together on this point.

Modification 6th to Article IX.

The change in this article consists in limiting the erection of docks and yards to the lots which belong to the United States or the canal, and is of no special consequence.

Modification 7th to Article X.

This is altered by the addition of section 2. If the docks and yards mentioned in article 9 are *national*, and the "police force" also "national," this section is wholly inadmissible.

Modification 8th to Article XI.

This is the political article of the treaty, intended in the original to secure military control over the canal. The alterations are, first, one of phraseology, not of substance—"Colombia reserves to herself," &c., &c., "and concedes to the United States," &c., &c. In a grown-up people this alteration would not have been made.

The second change is in relation to merchant vessels in time of war. The third is as to national ships of war of guaranteeing nations. The fourth is section 3, and *limits* the advantages previously offered to nations which assume *all* the responsibilities assumed by the United States, including "defense" of the canal, &c.

Modification 9th to Article XII.

This and the succeeding one introduce a new system of participation, Colombia accepting "tonnage" only. The first alteration in article 12 is inserting "now in force." The second is in the new rate of participation in tonnage duty.

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Modification 10th to Article XIII.

This article is wholly new, and completes the scheme opened in No. 12.

Modification 11th to Article XIV.

The articles 14 and 15 of the original treaty are suppressed, and this article inserted in place of both, and as controlling the question on the Panama Railroad.

Modification 12th.

Article 15 suppressed.

Modification 13th to Article XVI.

The alteration in this is mere phraseology.

Modification 14th to Article XVII.

Article 17, in relation to a share of profits to be given to Panama, is now suppressed.

Modification 15th to Article XX.

This consists in inserting the words "docks and yards," so that these also revert to Colombia at the end of the term of concession.

Modification 16th to Article XXI.

The first change in this is the word "person" for "citizens of that republic," probably a clerical error. The second is section 2, providing that the company shall keep an agent or attorney at Panama.

Modification 17th to Article XXIV.

The change here is in omitting from the end of the article the clause in relation to the penalty of $300,000. See in this connection modification 4 to article 6.

S. A. HURLBUT.

[Translation.]

Law approving the treaty for the construction and regulation of an interoceanic canal across the Isthmus of Panama or Darien.

The Congress of the United States of Colombia, considering "the treaty for the construction and regulation of an interoceanic canal across the Isthmus of Panama or Darien," signed in the city of Bogota on the 26th day of January, A. D. 1870, by Justo Anosomena and Jacobo Sanchez, plenipotentiaries of the United States of Colombia, on the one part, and Stephen A. Hurlbut, plenipotentiary of the United States of America, on the other part, the tenor of which is as follows—

[Here follows the original treaty.]

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Decrees Article I and only:

The preceding treaty is approved with the following modifications:

Modification first.

Article II to read thus:

"ARTICLE II.

"As soon as the detailed surveys shall have been completed and the line of the canal established, the President of the United States of America shall certify the same to the President of the United States of Colombia, and shall also forward duplicates of the maps, plans, and accompanying descriptions, and such maps, plans, and descriptions shall be deposited in the archives of both Governments.

"The route selected and the plans proposed may afterward be varied, if required, by the United States of America, of which variation the Government of Colombia shall be at once informed. It is, however, expressly provided that said canal shall not be constructed on the route of the Panama Railroad, without having first obtained the consent of the company holding the privilege of that railroad."

Modification second.

Article IV to read thus:

"ARTICLE IV.

"The United States of Colombia agree to grant, set apart, and secure for the work of the canal, its dependencies and appurtenances, all the territory, including sea and tributary waters, which may be selected for this purpose and shall be necessary, and also grant to the United States of America the power to take any lands owned by private individuals, which it may become necessary to condemn, yet making full compensation therefor, and following the course prescribed by the laws. But in determining the amount of indemnity, the enhanced value which may accrue to said lands thus condemned, by reason of the opening of the canal, shall not be taken into account.

"The Government of the United States of Colombia expressly reserve to themselves the right of establishing or permitting to be established cables for interoceanic telegraphic communication, with the power of laying them in the bed of the canal itself, or on the lands adjacent, and also of using the ports and termini of the canal requisite for the service of the cables."

Modification third.

Article V to read thus:

"ARTICLE V.

"The United States of Colombia also grant, in furtherance of the projected work, two hundred thousand hectares, or four hundred and ninety-four thousand two hundred and twenty acres, of the unappropriated lands of the nation, which may be found uninhabited and uncultivated, which said 200,000 hectares may be selected by the enterprise wherever it pleases, and such lands can be found within the limits of the State through whose territory the canal may be opened.

"The 200,000 hectares aforesaid shall not be granted in a continuous body, but in lots, each of which shall not exceed three kilometers on a side, if situated on either bank of the canal, nor more than ten kilometers on a side, if situated at a distance from the banks. Between each of the said lots there shall be a lot of the same size, which is reserved to the Government of Colombia. Said lots shall be equally divided between said contracting parties, in such manner that neither shall hold two adjoining lots, nor two lots fronting each other on the banks of the canal, nor two lots at either extremity of the canal. Each Government can freely dispose of the lots which belong to them, but always with the condition that such lots are subject to the right of way of the canal and its appurtenances. The Government of the United States of America shall have the right to select the first lot to commence the distribution. All the lands which shall not have been sold to private individuals, or retained as necessary for the canal, at the end of twenty years from the completion of the work shall revert to the absolute dominion and property of the United States of Colombia, without any claim for improvements or for any other cause.

"The belt of national lands through which the final survey of the canal may pass is hereby conceded in preference to the objects of this treaty, and the Government of

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Colombia will abstain from adjudicating the national lands through which said line may pass, until said line shall be fixed on the plans which are to be communicated to the Government of Colombia, according to Article II.

"SECTION 2. The national lands which may be granted to the enterprise by this article shall be conveyed as they may be demanded, according to the forms established by laws in such cases; it being incumbent on the grantee to prove them to be waste lands, to survey them, and to prepare the necessary plans. The Republic is not bound in any case to guarantee the title to the lands thus adjudicated."

Modification fourth.

Article VI to read thus:

"ARTICLE VI.

"While the present treaty remains in force the United States of Colombia bind themselves not to open, or permit to be opened, across their territory any other interoceanic canal, without having first obtained the express consent of the United States of America.

"The United States of America bind themselves not to open any other interoceanic canal across the American Continent, nor to solicit, accept, or support any concession which may have for its object the opening of a canal in any part of the territory of America, while the present treaty remains in force, without having first obtained the consent of the United States of Colombia."

Modification fifth.

Article VIII to read thus:

"The United States of America shall construct, or cause to be constructed, the projected canal (if found practicable), together with its appurtenances, so that it may be adapted for the passage of vessels of all classes not exceeding five * * thousand tons, and may employ such superintendents, engineers, mechanics, artisans, and laborers, or other employés as may be necessary for the purpose. The mititary force which may be necessary to protect the work on the canal shall be furnished by the United States of Colombia, unless they shall prefer that it should be furnished by the United States of America. The expenses which shall accrue from the use of said force shall, in either case, be paid by the United States of America. In case that the United States of America shall furnish said force they shall be withdrawn on the completion of the work, if required by Colombia.

"The United States of America undertake that the superintendents, engineers, mechanics, artisans, and workmen, and other employés, as well as the military force, if the case arise, shall conform to the laws of Colombia, and in respect to this they shall be subject to the civil authorities. Both the military force and the other employés of the enterprise shall in no case and under no pretext be employed in any service other than that above expressed."

Modification sixth.

Article IX to read thus:

"The United States of America may construct yards and docks, and maintain the same for the repair and supply of their ships in the ports at each extremity of the canal, but only on the lots which may have become their property under Article V, and may maintain within the limits of such docks and yards a police force (which shall not exceed two hundred men, without the permission of the Government of Colombia) for the protection of the property therein."

Modification seventh.

Article X to read thus:

"ARTICLE X.

"As soon as the canal, its dependencies and appurtenances, shall be completed, the inspection, possession, direction, and management of the same shall appertain to the United States of America and shall be exercised by them without any interference from any source, but without any jurisdiction over the territory or its inhabitants.

"The United States of Colombia shall retain its political sovereignty and jurisdiction over the canal and adjacent territory, but will not only permit, but hereby guarantees to the United States of America, in conformity with the constitution and laws of Colombia, the peaceable and undisturbed enjoyment, administration, direction, and

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management of the canal as already stated. But this guarantee in no respect differs from that which is accorded by the laws of Colombia to all persons and to all interests within its territory, and if the enterprise of the canal shall require any extraordinary public force in order to obtain more complete security, it will be furnished when requested, but at the expense of the enterprise.

"SECTION 2. In the event provided for in this article as well as by Articles VIII and IX, the military force as well as the police force, whatever may be its organization, shall be subject to the laws of Colombia and to the authority and jurisdiction of their functionaries."

Modification eighth.

Article XI to read thus:

"ARTICLE XI.

"The United States of America, on their part, guarantee to the Government of Colombia that the canal, its dependencies and appurtenances, shall be free and exempt from all hostile acts on the part of any other nation or foreign power, and for these purposes the United States of America constitute themselves an ally of the United States of Colombia to aid in repelling any attack or invasion upon the properties, rights, and privileges above guaranteed, it being well understood that such expenses as may be thus incurred by the United States of America shall be solely discharged by that power; and also that the United States of Colombia will defend the said canal and its dependencies, as part of her territory, to the extent of her ability.

"The United States of Colombia reserve to themselves the right to pass through the canal their ships of war, troops, and munitions of war at all times, free from all charge, impost, or toll, and extend to the United States of America the same right as to their ships of war, troops, and munitions of war; but the said canal shall remain closed to the flag of all nations which may be at war with either of the contracting parties, except in the cases provided in the clauses following:

"It being the interest and purpose of the contracting parties that the canal, so far as possible, should be a safe and privileged highway for the lawful commerce of all nations, it is stipulated that neither the United States of America nor the United States of Colombia, in case of war with any other nation, will exercise the belligerent right of excluding from the canal, capturing, blockading, or detaining the merchant vessels of such hostile nation within the limit of the canal, its ports, bays, or dependencies, or the adjacent sea within such limits as may hereafter be determined. It is, however, well understood that the benefits of the stipulations in this clause mentioned shall only apply to the merchant marine of those nations which, by treaties, shall guarantee the sovereignty of Colombia over the Isthmus of Panama and the territory in which the canal shall be constructed, and the immunity and neutrality of the canal, its ports, harbors, and dependencies, and the adjacent sea, and shall reciprocally concede the same rights of exemption from capture, blockade, and detention within the aforesaid limits, with the same conditions and to the same extent, to the merchant marine of the United States of America and of the United States of Colombia.

"SECTION 2. The two contracting parties further agree to offer and concede to such nations as may join for the purpose of giving the guarantees aforesaid of the sovereignty of Colombia over the Colombian Isthmus, and of neutrality and immunity of the canal, the following bases and conditions of an agreement relative to the passage of ships of war through the canal, that is to say: In case of war unfortunately arising and existing between either of the contracting parties and any one or more nations which shall have given the above guarantees, or between any of such guaranteeing powers, the right of transit through the canal shall be suspended as regards the ships of war of such belligerents during the existence of such hostilities; and no act of hostility, in any form, shall be committed by such belligerents within the limits of the canal, its ports, bays, or dependencies, nor in the adjacent seas within such limits as may be hereafter determined. But it is expressly stipulated that the benefits and advantages set forth in the preceding clauses shall only be enjoyed by the nations which shall have given the guarantees aforesaid, and which shall, by treaties with the two contracting parties, except the principles above set forth, and grant, on their part, the same exemptions to the United States of America and the United States of Colombia. In time of war the transit through the canal shall be closed to the ships of war of such belligerents as shall not have guaranteed the sovereignty of Colombia over the Isthmus and territory mentioned in this article and the immunity and neutrality of the canal, its dependencies, appurtenances, and the adjacent sea.

"SECTION 3. The advantages, rights, and exemptions specified in this article, and the exemption of tonnage duties mentioned in Article XXV, shall be offered and

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conceded in perfect equality, and without imposing other conditions than as stated in this article, to all the nations which may give their guarantee in the same terms as do the United States of America in favor of the sovereignty of Colombi over the Isthmus of Panama and the territory in which the canal shall be constructed, and in favor of the immunity and neutrality of the canal, its dependencies, appurtenances, and the adjacent sea."

Modification ninth.

Article XII to read thus:

"ARTICLE XII.

"The United States of America may establish, and from time to time change and alter, a tariff of imposts on merchant vessels, loaded or unloaded, and on the ships of war of other nations than the United States of America and the United States of Colombia which may pass through the canal, according to tonnage and on the basis of the most perfect equality, at all times and for all nations, without other restriction than is contained in the preceding article.

"The tonnage shall be measured according to the laws now in force in the United States of America for the measurement of tonnage, and the amount of said tonnage duty shall never be less than the proportion which is hereinafter conceded to the United States of Colombia. The United States of Colombia shall receive, as their share of said impost, for each ton which said ships may measure, thirty centavos of a dollar during the first twenty years after the canal shall be opened for business, and forty centavos of a dollar during the remainder of the concession."

Modification tenth.

Article XIII to read thus:

"ARTICLE XIII.

"The United States of America may establish, and from time to time change and alter, a tariff of charges upon passengers, and also upon the cargoes of vessels passing through the canal, and also for the use of the docks, wharves, warehouses, harbors, and other necessary works of the canal. The tariff of charges upon the cargoes shall be calculated *ad valorem*, that is to say, upon the value of the goods and merchandise at the port of shipment, and at the same amount and rate for all classes of merchandise; and if the value at the port of shipment can not be clearly ascertained, then upon the value at the entrance into the canal. Special rates, however, may be established on gold, silver, platina, and precious stones. All the duties above mentioned shall be fixed without making any distinction in favor of one nation or against another.

"The United States of America, or its grantee, in conformity with this treaty, shall have full power to determine the time, place, and manner in which the payment of the duties aforesaid shall be made, and, in order to secure their payment, shall have power to hinder the entrance or departure into or from their canal, its stores, warehouses, harbors, and other appurtenances, of vessels, passengers, or merchandise which shall not have paid such duties.

"SECTION 2. The Government of the United States of Colombia shall have the right to maintain a permanent commission of its own agents to examine and verify the tonnage of vessels."

Modification eleventh.

Article XIV to read thus:

"ARTICLE XIV.

"If, by reason of the opening of the canal, the Panama Railroad shall be destroyed, or its business and profits be diminished to such an extent that the said railroad company shall be unable to pay to the United States of Colombia the whole or a part of the sum of $250,000 which it now pays, after paying its expenses and necessary repairs and a dividend of 5 per centum on $10,000,000, at which the cost of said road is estimated, then the enterprise of the canal shall pay, in the first instance, the whole, and in the second, the difference between said sum of $250,000 and the amount actually received by the United States of Colombia, or, in lieu thereof, the capital sum which is represented by the income of $250,000 at 5 per centum per annum.

"It is understood that the United States of America are substituted into the right of appointing the arbitrator mentioned in the second article of the contract concluded

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with the Panama Railroad Company on the 15th August, 1867, as also into the right of receiving the half of the indemnity which, by that article, is allotted to the United States of Colombia. Nothing in this article contained shall be construed to release the said railroad company from the obligation imposed on them in said contract in favor of the United States of Colombia."

Modification twelfth.

Article XV is suppressed.

Modification thirteenth.

Article XVI to read thus:

"ARTICLE XVI.

"For the better understanding of the articles of this treaty which speak of sums of money or refer to the conclusion of the work of the canal, it is declared: 1st, that the money in which said sums are to be estimated shall be that of the United States of Colombia, whose unit is a piece of silver called the "peso," weighing 25 grams, at the fineness of nine hundred-thousandths; 2d, that the canal shall be considered finished from the time when the first vessel on which duties are collected shall pass from ocean to ocean, although some portion of the work may not be completed."

Modification fourteenth.

Article XVII suppressed.

Modification fifteenth.

Article XX to read thus:

"ARTICLE XX.

"The rights and privileges herein granted shall continue in force for the term of one hundred years, counted from the date at which the canal shall be opened to commerce according to Article XVI, and at the expiration of that time the said canal, with all its dependencies, appurtenances, and accessories, docks and yards, shall become the absolute property of the United States of Colombia, without any payment of indemnity of any kind whatever. The canal shall be maintained in the best order and condition until its delivery, and the United States of America shall retain whatever profits or advantages they may have received during said term."

Modification sixteenth.

Article XXI to read thus:

"ARTICLE XXI.

"The United States of America may by law transfer all the rights, privileges, franchises, duties, properties, and obligations in relation to the exploration, surveying, construction, and maintenance of said canal to any person or corporation created by law, and in such event, such person or corporation shall enjoy all the rights, properties, franchises, and privileges herein granted to the United States of America, and shall be subject to all the duties and obligations herein contracted to be performed by the United States of America; but such transfer shall not work a complete substitution of such individual or corporation into the place and stead of the United States of America, and the Government of the United States of Colombia will hold itself bound as trustee for the United States of Colombia to enforce the fulfillment of the provisions of this treaty upon the person or corporation which shall derive title from it under such transfer in so far as such provision shall apply to such person or corporation. The person or corporation to whom such transfer shall have been made shall hold and enjoy the properties, rights, immunities, and privileges hereinbefore expressed, in the said canal and its dependencies and appurtenances, subject, however, to the reservations hereinbefore set forth in favor of the United States of Colombia, for the term herein mentioned. The political obligations contracted between the United States of America and the United States of Colombia, specified in Articles XI and XXV, shall remain permanent and irrevocable.

"SECTION 2. In case that the United States of America, in use of the power granted in this article, shall transfer their rights, privileges, &c., to any private person

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or corporation created by law, such person or corporation shall be bound to maintain in Panama a representative with sufficient powers to answer to the Government of the Union or of the State, as well as to private individuals, upon all matters connected with the enterprise."

Modification seventeenth.

Article XXIV to read thus:

"ARTICLE XXIV.

"In addition to the cases provided for in the preceding article, this treaty shall terminate, and the rights granted under it shall lapse—

"First. If the United States of America shall not execute or cause to be executed the explorations and surveys to which the first article of the treaty refers within the space of three years from the date of the exchange of the ratifications of this treaty.

"Second. If the work of excavating the canal shall not be commenced within the space of five years from the date of said exchange, provided the work be found practicable.

"Third. If the work shall not be completed within fifteen years from the date of its commencement.

"The periods above mentioned shall be deemed to be interrupted, and to that extent prolonged, if any instance of superior force or of the act of God shall intervene to prevent the fulfillment of the same without the consent of those in charge of the undertaking."

Given in Bogota this 30th day of June, 1870.

MANUEL DE J. QUIJANO,
President of the Senate.
J. DEL CRUZ RODIGUEZ,
President of the Chamber.
EUSTACIO DE LA TORRE N.,
Secretary of the Senate.
J ORJE ISAACS,
Secretary of the Chamber.

BOGOTA, *July 8, 1870.*

Let this be published and executed.

EUSTORJIO SALGAR.

The secretary for foreign relations,

FELIPE TAPATA.

The above is a correct translation from the official Spanish text.

STEPHEN A. HURLBUT,
Minister Resident United States of America.

BOGOTA, *July 13, 1870.*

5.—WYSE CONCESSION, MARCH 20, 1878.

[Translation from the Diario Official of Bogota, Wednesday, May 22, 1878.]

Law 28th of 1878 (18th of May) "approving the contract for the construction of an interoceanic canal across Colombian territory."

The Congress of the United States of Colombia, after an examination of the contract, which is verbatim as follows:

CONTRACT FOR THE CONSTRUCTION OF AN INTEROCEANIC CANAL ACROSS COLOMBIAN TERRITORY.

Eustorgio Salgar, secretary of the interior and of foreign relations of the United States of Columbia, duly authorized, of the one part, and of the other part Lucien N. B. Wyse, chief of the Isthmus Scientific Surveying Expedition in 1876, 1877, and 1878, member and delegate of the board of directors of the International Interoceanic Canal Association, presided by General Etienne Türr, in conformity with

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powers bestowed at Paris, from the 27th to the 29th of October, 1877, have celebrated the following contract:

ARTICLE 1.* The Government of the United States of Colombia grants to Mr. Lucien N. B. Wyse, who accepts it in the name of the civil International Interoceanic Canal Association, represented by their board of directors, the exclusive privilege for the construction across its territory, and for the operating of a canal between the Atlantic and Pacific Oceans. Said canal may be constructed without restrictive stipulations of any kind.

This concession is made under the following conditions:

1st. The duration of the privilege shall be for ninety-nine years from the day on which the canal shall be wholly or partially opened to public service, or when the grantees or their representatives commence to collect the dues on transit and navigation.

2d. From the date of approbation by the Colombia Congress for the opening of the interoceanic canal, the Government of the republic cannot construct, nor concede to any company or individual, under any consideration whatever, the right to construct another canal across Colombian territory which shall communicate the two oceans. Should the grantees wish to construct a railroad as an auxiliary to the canal, the Government (with the exception of existing rights) cannot grant to any other company or individual, the right to build another interoceanic railroad, nor do so, itself, during the time allowed for the construction and use of the canal.

3d. The necessary studies of the ground, and the route for the line of the canal, shall be made, at the expense of the grantees, by an international commission of individuals and competent engineers, in which two Colombian engineers shall take part. The commission shall determine the general route of the canal and report to the Colombian Government directly, or to its diplomatic agents in the United States or Europe, upon the results obtained, at the latest in 1881, unless unavoidable circumstances clearly proven should prevent their so doing. The report shall comprise in duplicate the scientific labors performed, and an estimate of the projected work.

4th. The grantees shall then have a period of two years to organize a universal joint-stock company, which shall take charge of the enterprise, and of the construction of the canal. This term shall commence from the date mentioned in the preceding paragraph.

5th. The canal shall be finished and placed at the public service within the subsequent twelve years after the formation of the company which will undertake its construction, but the executive power is authorized to grant a further maximum term of six years in the case of encountering superhuman obstacles beyond the power of the company, and if after one-third of the canal is built, the company should acknowledge the impossibility of concluding the work in the said twelve years.

6th. The canal shall have the length, depth, and all other conditions requisite in order that sailing vessels and steamships measuring up to 140 meters long, 16 meters in width, and 8 meters in draught shall. with lowered topmasts, be able to pass the canal.

7th. All public lands which may be required for the route of the canal, the ports, stations, wharves, moorings, warehouses, and in gen-

* This article modified by Colombian Congress. See decree which follows.

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eral for the construction and service of the canal as well as for the railway, should it be convenient to build it, shall be ceded gratis to the grantees.

8th. These unoccupied public lands shall revert to the government of the republic with the railroad and canal at the termination of this privilege: there is also granted for the use of the canal a belt of land two hundred meters wide on each side of its banks throughout all the distance which it may run, but the owners of lands on its banks shall have free access to the canal and its ports as well as to the right of use of any roads which the grantees may open there; and this without paying any dues to the company.

9th. If the lands through which the canal shall pass, or upon which the railroad may be built, should, in whole or in part, be private property, the grantees shall have the right to demand their expropriation by the government according to all the legal formalities in such cases. The indemnity which shall be made to the landowners, and which shall be based on their actual value, shall be at the expense of the company. The grantees shall enjoy in this case, and in those of temporary occupation of private property, all the rights and privileges which the existing legislation confers.

10th. The grantees may establish and operate at their cost the telegraph lines which they may consider useful as auxiliaries in the building and management of the canal.

ART. 2.* Within the term of twelve months after the international commission shall have presented the result of their definitive surveys, the grantees will deposit in the bank or banks of London, which the national executive power may designate, the sum of seven hundred and fifty thousand francs as security for the accomplishment of the work. The receipt of said bank or banks shall be a voucher of the fulfillment of said engagement. The deposit shall be made in certificates of the foreign debt of Colombia, at the current market price on the day of delivery. It is understood that should the grantees forfeit this deposit by virtue of the provisions of clause 2, Article 22, of this contract, the said sum with its interest shall become the sole property of the Colombian Government. On the conclusion of the canal the amount deposited as security shall remain to the credit of the treasury, as indemnity to the national government for the expenses incurred in the erection of buildings for the use of public offices.

ART. 3.* Should the route of the canal from one ocean to the other pass to the west and to the north of the imaginary straight line which connects Cape Tiburon with Garachine Point, the grantees must make a friendly arrangement with the Panama Railroad Company, or pay an indemnity which shall be determined in accordance with the provisions of law 46, of August 16, 1867, "which approves the contract celebrated July 5, 1867, reformatory of that of April 15, 1850, for the construction of a railroad from ocean to ocean, across the Isthmus of Panama."

In case the international commission selects the Atrato, or some other stream now navigable, as one of the entrances of the canal, the canalized mouth shall be considered as one of the parts of the principal work, and maintained in equally good condition. River navigation in the upper part of the stream, so far as it has not for its object the use of the canal, shall be open to commerce, and free from all dues.

ART. 4.* In addition to the lands granted by paragraphs 7 and 8 of

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article 1, these are gratuitously given to the grantees, and at their choice five hundred thousand hectares of the unoccupied public lands, with the mines which they may contain. This allotment shall be made directly by the national executive power. The public lands situated on the sea-coast, or on the border of the canal, or at the rivers, shall be divided as closely as possible in alternate lots between the government and the company, forming, if the ground will permit, areas of one and two thousand hectares. The measurement for the allotment or location shall be made at the cost of the guarantees, and with the intervention of commissioners of the government.

Unoccupied lands so granted, with the mines which they may hold, shall be awarded to the grantees as soon as they request them after the deposit of the security. In a belt of two myriameters on each side of the canal, and during five years after the conclusion of the work, the government cannot transfer other lands beyond the said lots until the company shall have obtained the whole of the lands which are granted to it gratuitously.

ART. 5.* The government of the republic declares neutral, for all time, the ports of each terminus of the canal and the waters of the latter from one sea to the other, and consequently, in case of war between other nations or between one or more of these and Colombia, the transit of the canal shall not be interrupted on that account, and the merchant vessels and individuals of all nations of the world may enter said ports, and navigate the canal without let or hindrance. In general any ship whatever may navigate the canal freely without discrimination, exclusion, or preference of persons or nationalities, by paying the dues and abiding by the regulations laid down by the company for the use of said canal and its dependencies. Exception is made of foreign troops, which cannot pass without permission from Congress.

ART. 6.* The entrance to the canal shall be rigorously prohibited to the war vessels of those nations which are at war, and to those whose destination manifests their intention to take part in hostilities.

ART. 7. The grantees will enjoy the right during the whole time of the privilege to use the ports at the termini of the canal, as well as intermediate points, for the anchorage and repair of ships, and the loading, depositing, transshipping, or landing of merchandise. The ports of the canal shall be open and free to the commerce of all nations, and no import duties shall be exacted, except on merchandise destined to be introduced for the consumption of the rest of the republic. The said ports shall, therefore, be open to importations from the commencement of the work, and the custom-houses, and the revenue service which the Government may deem convenient for the collection of duties on merchandise destined for other portions of the republic, shall be established, in order to prevent introduction of smuggled goods.

ART. 8.* The executive power shall issue the necessary regulations for the protection of its revenue by preventing smuggling, and shall appoint the number of men necessary for this service at his own expense. Of the employés indispensable for this, ten shall be paid by the company, and their salaries shall not exceed those paid to officials of the same grade in the custom-house at Barranquilla. When necessary, the company shall transport, free of charge by the canal or by the auxiliary railroad, the men at the service of the union or destined for police duty, with the object of guarding public service without, or

* This article modified by Colombian Congress. See decree which follows.

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preserving public order within. If the company should not own ships or tugs, they shall pay the passage of these men across the isthmus. The sustenance of the public force necessary for the security of the interoceanic transit shall also be at the expense of the company.

ART. 9. The grantees shall have the right to introduce, free of import or other duties of whatever class, all the instruments, machinery, tools, fixtures, provisions, clothing for laborers which they may need during all the time allowed to them for the construction and use of the canal. The ships carrying cargoes for the use of the enterprise shall enjoy free entry into whatever point shall afford them easy access to the line of the canal.

ART. 10. No taxes, either national, municipal, of the State, or of any other class, shall be levied upon the canal, the ships that navigate it, the tugs and vessels at the service of the grantees, their warehouses, work-shops, and offices, factories of whatever class, storehouses, wharves, machinery, or other works or property of whatever character belonging to them, and which they may need for the service of the canal and its dependencies, during the time conceded for its construction and operation. The grantees shall also have the right to take from unoccupied lands the materials of any kind which they may require without paying any compensation for the same.

ART. 11. The passengers, money, precious metals, merchandise, and articles and effects of all kinds which may be transported over the canal, shall also be exempt from all duties, national, municipal, transit, and others. The same exemption is extended to all articles and merchandise for interior or exterior commerce which may remain in deposit, according to the conditions which may be stipulated, with the company in the storehouses and stations belonging to them.

ART. 12. Ships desiring to cross the canal shall present at the port of the terminus of the canal at which the' may arrive, their respective registers and other sailing papers, prescribed by the laws and public treaties, so that the vessels may navigate without interruption. Vessels not having said papers, or which should refuse to present them, may be detained and proceeded against according to law.

ART. 13.* The government allows the immigration and free access to the lands and work-shops of the grantees of all employés and laborers, of whatever nationality, contracted for the enterprise, or who may come to engage themselves in the service of the canal, on condition that such employés or laborers submit to existing laws, and to the regulations established by the company. The government assures them aid and protection and the enjoyment of their rights and privileges, according to the constitution and laws of the nation, during the time they live in Colombian territory.

ART. 14.* As a compensation to the grantees for the expenses of the building, preservation, and operation of the canal, which are for their account, they shall have the right during all the period of this privilege to charge and collect for passage over the canal, and the ports dependent upon it, dues for light-house, anchorage, transit, navigation, repairs, pilotage, towing, hauling, storage, and station, as per the tariffs they may establish, and which may be modified at any time under the following express conditions:

1st. These dues shall be imposed without exception or favor upon all ships in identical conditions.

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*This article modified by Colombian Congress. See decree which follows.

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2d. The tariff shall be published four months before going into operation in the Diario Oficial of the Government, as well as in the capitals and principal commercial ports of the countries affected thereby.

3d. The principal dues to be collected on vessels shall not exceed the rate of ten francs for each cubic meter, resulting from the multiplication of the principal dimensions of the submerged portion of the ship in transit (length, breadth, and draught).

4th. The principal dimensions of the ship in transit, that is to say, the greatest exterior length and beam of vessel, as well as the greatest draught of water, shall be nautical dimensions, inserted in the official clearance papers, with the exception of such modifications as may result in the course of the voyage. The captains of ships and agents of the company may require a new measurement to be taken, which operation shall be effected at the expense of the solicitor.

5th. The same measurement, that is to say, the parallelopiped described by the submerged part of the ship, shall serve as the basis for the determination of the other accessory charges.

6th. Special dues for navigation shall be reduced in proportion to the excess when the net profits derived therefrom shall exceed 12 per cent. of the capital employed in the enterprise.

ART. 15.* By way of compensation for the right and exemptions which are conferred upon the grantees by this contract, the Government of the Republic shall enjoy a participation equal to 5 per cent. of the gross earning which shall accrue to the enterprise, as per the tariff to be fixed by the company.

ART. 16. The grantees are authorized to require payment in advance of any charges which they may establish; nine-tenths of these charges shall be made payable in gold, and only the remaining one-tenth part shall be payable in silver of twenty-five grammes, of a fineness of 900.

ART. 17. The ships which shall infringe upon the rules established by the company shall be subject to the payment of a fine which said company shall fix in its regulations, of which due notice shall be given to the public at the time of the issue of the tariff. Should they refuse to pay said fine, nor furnish sufficient security, they may be detained and prosecuted according to the laws. The same proceedings may be observed for the damages they may have caused.

ART. 18. If the opening of the canal shall be deemed financially possible, the grantees are authorized to form, under the immediate protection of the Colombian Government, a universal joint-stock company, which shall undertake the execution of the work, taking charge of all financial transactions which may be needed. As this enterprise is essentially international, and for public utility, it is understood that it shall always be kept free from political influences.

The company shall take the name of "The Universal Interoceanic Canal Association"; its residence shall be fixed in Bogota, New York, London, or Paris, as the grantees may choose; branch offices may be established wherever necessary. Its contracts, shares, bonds, and titles of its property shall never be subjected by the Government of Colombia to any charges for registry, emission, stamps, or any similar imposts upon the sale or transfer of these shares or bonds, as well as on the profits produced by these values.

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ART. 19. The company is authorized to reserve as much as 10 per cent. of the shares emitted, to form a fund of shares, to the benefit of the founders and promoters of the enterprise. Of the products of the concern, the company take, in the first place, what is necessary to cover all expenses of repairs, operations, and administration, and the share which belongs to the Government, as well as the sums necessary for the payment of the interest and the amortization of the bonds, and, if possible, the fixed interest or dividend of the shares; that which remains will be considered as net profit, out of which 80 per cent. at least will be divided among the shareholders.

ART. 20.* The Colombian Government, should it consider it important, may name a special commissioner in the board of directors of the company. This delegate shall enjoy all the advantages conceded to the other directors by the statutes of the company. The grantees are obliged to appoint in Bogota, near the National Government, an agent duly authorized to resolve all doubts and to present all demands to which this contract may give rise. Reciprocally, and with the same intention, the Government shall name a resident agent in the principal establishment of the company on the canal. In every case the difficulties which may arise between the contracting parties shall be submitted to a committee of arbitrators, composed of four individuals, two of whom shall be selected by the executive power from among the members of the federal supreme court, and the other two named by the company. In case of a tie in the votes of this committee, the said arbitrators shall name a fifth party. The decision pronounced by this tribunal shall be final.

ART. 21. The grantees, or those who in the future may succeed them in their rights, may transfer those rights to other capitalists or financial companies, but it is absolutely prohibited to cede or mortgage them under any consideration whatever to any nation or foreign Government.

ART. 22.* The grantees or their representatives shall forfeit their acquired rights in the following cases:

1st. If they do not deposit within the term stipulated the amount required as security for the execution of the work.

2d. If in the first of the twelve years allowed for the construction of the canal the work is not already begun. In this case the company shall forfeit the sum deposited as a guarantee, and which shall go to the benefit of the Republic.

3d. If at the termination of the period fixed by paragraph fifth of article one the canal is not navigable.

4th. If they do not comply with the provisions of article 21.

5th. If the service of the canal should be interrupted without some superhuman obstacle.

In cases 2, 3, 4, and 5, the federal supreme court shall decide whether the privilege has become null or void.

ART. 23.* In all cases of declaration of nullity, the public lands mentioned in paragraphs 7 and 8 of article 1, and those not alienated among those conceded in article 4, will return to the possession of the Republic in the state in which they are found, and without any indemnity whatever, and also the buildings, materials, works, and improvements of which the grantees hold possession in the canal. These shall reserve only their capital, vessels, provisions, and, in general, their movable property.

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*This article modified by Colombian Congress. See decree which follows.

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ART. 24. Five years previous to the expiration of the ninety-nine years of the privilege, the executive power shall appoint a commissioner to examine the condition of the canal and annexes, and, with the knowledge of the company or its agents on the Isthmus, to make an official report, describing in every detail the condition of the same and pointing out what repairs may be necessary. This report will serve to establish in what condition the canal and its dependencies shall be delivered to the National Government on the day of expiration of the privilege now granted.

ART. 25. The enterprise of the canal is reputed to be of public utility.

ART. 26. This contract, which will serve as a substitute for the provisions of law 33, of May 26, 1876, and the clauses of the contract celebrated on the 28th of May of the same year, shall be submitted for the approval of the President of the union and the definite acceptance by the Congress of the nation.

In witness whereof they sign the present in Bogota, on the 20th March, 1878.

EUSTORGIO SALGAR.
LUCIEN N. B. WYSE.

BOGOTA, *March* 23, 1878.

Approved.
The President of the union:

AQUILEO PARRO.

The secretary of the interior and of foreign relations:

EUSTORGIO SALGAR.

DECREES.

The foregoing contract is hereby approved, with the following modifications:

Article 1, with the addition of the following paragraph:

§—"It is, however, stipulated and agreed that if, before the payment of the security determined upon in article 2, the Colombian Government should receive any formal proposal, sufficiently guaranteed, in the opinion of the said Government, to construct the canal in less time and under more advantageous conditions for the United States of Colombia, said proposal shall be communicated to the grantees or their representatives, that they may be substituted therein, in which case they shall be preferred; but if they do not accept said substitution, the Colombian Government, in the new contract which they may celebrate, shall exact, besides the guarantee mentioned in article 2, the sum of three hundred thousand dollars in coin, which shall be given as indemnity to the grantees."

Article 2, thus:

"ART. 2. Within the term of twelve months from the date at which the international commission shall have presented the definite results of their studies, the grantees shall deposit in the bank or banks of London, to be designated by the national executive power, the sum of seven hundred and fifty thousand francs, to the exclusion of all paper money, as security for the execution of the work. The receipt of

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said banks shall be a voucher for the fulfillment of said deposit. It is understood that if the grantees should lose that deposit by virtue of the stipulations contained in clauses 2 and 3 of article 22 of the present contract, the sum referred to, with interest accrued, shall become *in toto* the property of the Colombian Government. After the conclusion of the canal, said sum, without interest, which latter will in this case belong to grantees, shall remain for benefit of the treasury, for the outlays which it may have incurred or may incur in the construction of buildings for the service of the public officers."

Article 3, thus:

"ART. 3. If the line of the canal to be constructed from sea to sea should pass to the west and to the north of the imaginary straight line which joins Cape Tiburon with Garachiné Point, the grantees must enter into some amicable arrangement with the Panama Railroad Company, or pay an indemnity, which shall be established in accordance with the provisions of law 46, of August 16, 1867, 'approving the contract celebrated on July 5, 1867, reformatory of the contract of April 15, 1850, for the construction of an iron railroad from one ocean to the other through the Isthmus of Panama.'

"In case the international commission should choose the Atrato or some other stream already navigable as one of the entrances to the canal, the ingress and egress by such stream, and the navigation of its waters, so long as it is not intended to cross the canal, shall be open to commerce and free from all imposts."

Article 4, thus:

"ART. 4. Besides the lands granted in paragraphs 7 and 8 of article 1, there shall be awarded to the grantees, as an aid for the accomplishment of the work, and not otherwise, five hundred thousand hectares of public lands, with the mines they may comprise, in the localities which the company may select. This award shall be made directly by the national executive power. The public lands situated on the seacoast, on the borders of the canal or of the rivers, shall be divided in alternate lots between the Government and the company, forming areas of from one to two thousand hectares. The measurements for the allotment or locating shall be made at the expense of the grantees and with the intervention of government commissioners. The public lands thus granted, with the mines they may hold, shall be awarded to the grantees as fast as the work of construction of the canal progresses, and in accordance with rules to be laid down by the executive power.

"Within a belt of two myriameters on each side of the canal, and during five years after the termination of the work, the government shall not have the right to grant other lands beyond the said lots until the company shall have called for the whole number of lots granted by this article."

Article 5, thus:

"ART. 5. The government of the republic hereby declares the ports at each end of the canal, and the waters of the latter from sea to sea, to be neutral for all time; and consequently in case of war among other nations, the transit through the canal shall not be interrupted by such event, and the merchant vessels and individuals of all nations of the world may enter into said ports and travel on the canal without being molested or detained. In general, any vessel may pass freely without any discrimination, exclusion, or preference of nationalities or persons,

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on payment of the dues and the observance of the rules established by the company for the use of the canal and its dependencies. Exception is to be made of foreign troops, which shall not have the right to pass without permission from Congress, and of the vessels of nations which, being at war with the United States of Colombia, may not have obtained the right to pass through the canal at all times, by public treaties wherein is guaranteed the sovereignty of Colombia over the Isthmus of Panama and over the territory whereon the canal is to be cut, besides immunity and neutrality of the said canal, its ports, bays, and dependencies and the adjacent seas."

Article 6, thus:

"ART. 6. The United States of Colombia reserve to themselves the right to pass their vessels, troops, ammunitions of war at all times and without paying any dues whatever. The passage of the canal is strictly closed to war vessels of nations at war, and which may not have acquired, by public treaty with the Colombian Government, the right to pass the canal at all times."

Article 8, thus:

"ART. 8. The executive power shall dictate, for the protection of the financial interests of the republic, the regulations conducive to the prevention of smuggling, and shall have the power to station, at the cost of the nation, the number of men which they may deem necessary for that service.

"Out of the indispensable officials for that service, ten shall be paid by the company, and their salaries shall not exceed those enjoyed by employés of the same rank in the Barranquilla custom-house.

"The company shall carry gratis through the canal, or on the auxiliary railway, the men destined for the service of the nation, for the service of the state through whose territory the canal may pass, or for the service of the police, with the object of guarding against foreign enemies, or for the preservation of public order, and shall also transport gratis the baggage of such men, their war materials, armament, and clothing which they may need for the service assigned to them.

"The subsistence of the public force which may be deemed necessary for the safety of the interoceanic transit shall likewise be at the expense of the company."

Article 13, thus:

"ART. 13. The government allows the immigration and free access to the lands and shops of the grantees of all the employés and workingmen, of whatever nationality, who may be contracted for the work, or who may come to engage themselves to work on the canal, on condition that such employés or laborers shall submit to the existing laws, and to the regulations established by the company. The government promises them support and protection, and the enjoyment of their rights and guarantees, in conformity with the national constitution and laws, during the time they may sojourn on Colombian territory.

"The *national peons* and laborers employed on the work of the canal shall be exempt from all requisition of military service, national as well as of the state."

Article 14, thus:

"ART. 14. In order to indemnify the *grantees* of the construction, maintenance, and working expenses incurred by them, they shall have, during the whole period of the privilege, the exclusive right to establish and collect, for the passage of the canal and its ports, the dues for

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light-houses, anchorage, transit, navigation, repairs, pilotage, towage, hauling, storage, and of station according to the tariff which they may issue, and which they may modify at any time under the following express conditions:

"1st. They shall collect these dues, without any exceptional favor, from all vessels in like circumstances.

"2d. The tariffs shall be published four months before their enforcement in the Diario Oficial of the government, as well as in the capitals and the principal commercial ports of the countries interested.

"3d. The principal navigation dues to be collected shall not exceed the sum of ten francs for each cubic meter resulting from the mutiplication of the principal dimensions of the submerged part of the ship in transit (length, breadth, and draught).

"4th. The principal dimensions of the ship in transit, that is to say, the maximum exterior length and breadth at the water-line, as well as the greatest draught, shall be the metrical dimension inserted in the official clearance papers, excepting any modifications supervening during the voyage. The ships' captains and the company's agents may demand a new measurement, which operations shall be carried out at the expense of the petitioner; and,

"5th. The same measurement, that is to say, the number of cubic meters contained in the parallelopipedon circumscribing the submerged part of the ship, shall serve as a basis for the determination of the other accessory dues."

Article 15, thus:

"ART. 15. By way of compensation for the rights and exemptions which are allowed to the grantees in this contract, the government of the republic shall be entitled to a share amounting to five per cent. on all collections made by the company, by virtue of the dues which may be imposed in conforming with article 14, during the first twenty-five years after the opening of the canal to the public service. From the twenty-sixth up to the fiftieth year, inclusive, it shall be entitled to a share of six per cent.; from the fifty-first to the seventy-fifth to seven per cent.; and from the seventy-sixth to the termination of the privilege to eight per cent. It is understood that these shares shall be reckoned, as has been said, on the gross income from all sources, without any deductions whatever for expenses, interest on shares, or on loans or debts against the company. The government of the republic shall have the right to appoint a commissioner or agent, who shall intervene in the collections and examine the accounts, and the distribution or payment of the shares coming to the government shall be made in due half-yearly installments. The product of the five, six, seven, and eight per cent. shall be distributed as follows:

"Four-fifths of it shall go to the government of the republic, and the remaining one-fifth to the government of the State through whose territory the canal may pass.

"The company guarantees to the Government of Colombia that the share of the latter shall in no case be less than the sum of two hundred and fifty thousand dollars a year, which is the same as that received as its share in the earnings of the Panama Railroad, so that if in any year the five per cent. share should not reach said sum, it shall be completed out of the common funds of the company."

Article 20, thus:

"ART. 20. The Colombian Government may appoint a special dele-

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gate in the board of directors of the company whenever it may consider it useful to do so. This delegate shall enjoy the same advantages as are granted to the other directors by the by-laws of the company.

"The grantees pledge themselves to appoint in the capital of the Union, near the national government, a duly authorized agent for the purpose of clearing up all doubts and presenting any claims to which this contract may give rise. Reciprocally and in the same sense, the government shall appoint an agent, who shall reside in the principal establishment of the company situated on the line of the canal; and, according to the national constitution, the difficulties which may arise between the contracting parties shall be submitted to the decision of the federal supreme court."

Article 22, thus:

"ART. 22. The grantees, or their representatives, shall lose the right hereby acquired in the following cases:

"1st. If they do not deposit, on the terms agreed upon, the sum which by way of security must insure the execution of the work.

"2d. If, in the first year of the twelve that are allowed for the construction of the canal, the works are not already commenced, in this case the company shall lose the sum deposited by way of security, together with the interest that may have accrued; all of which will remain for the benefit of the republic.

"3d. If, at the end of the second period fixed in paragraph 5 of Article 1, the canal is not transitable, in this case also the company shall lose the sum deposited as security; which, with the interests accrued, shall remain for the benefit of the republic.

"4th. If they violate the prescriptions of Article 21; and,

"5th. If the service of the canal should be interrupted for a longer period than six months without its being occasioned by the acts of God, &c.

"In cases 2, 3, 4, and 5, the federal supreme court shall have the right to decide whether the privilege has become annulled or not."

Article 23, thus:

"ART. 23. In all cases of decisions of nullity, the public lands mentioned in clauses 7 and 8 of Article 1, and such lands as are not settled or inhabited from among those granted by Article 4, shall revert to the possession of the republic in the condition they may be found in, and without any indemnity whatever, as well as the buildings, materials, works, and improvements which the grantees may possess along the canal and its accessories. The grantees shall only retain their capital, vessels, provisions, and in general all movable property."

Given at Bogota on the seventeenth day of May, eighteen hundred and seventy-eight.

The president of the senate of plenipotentiaries:

RAMON GOMEZ.

The president of the chamber of representatives:

BELISARIO ESPONDA.

The secretary of the senate of plenipotentiaries:

JULIO E. PEREZ.

The secretary of the chamber of representatives:

ENRIQUE GAOUA.

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BOGOTA, *May 18, 1878.*

Let it be published and enforced.

The President of the Union:

[SEAL.] JULIAN TRUJILLO.

The secretary of the interior and foreign relations:

FRANCISCO J. ZALDUA.

Note from Mr. Lucien N. B. Wyse, wherein he declares he accepts all the modifications made by law 28 to the contract for the construction of the interoceanic canal.

To the honorable Secretary of the Interior and Foreign Relations:

I have the honor to inform you that I accept each and all of the modifications introduced by Congress to the contract which I celebrated with Señor Eustorgio Salgar, your worthy predecessor in the department of the interior and foreign relations, for the construction of the interoceanic canal, which contract was approved by the executive power under date of March 23 last.

The modifications to which I have alluded are those recorded in law No. 28 of the 18th instant.

I hasten to lay this declaration before the Government of Colombia, so that it may be taken into consideration, in order that said law may be effective in all its parts.

Bogota, May 18, 1878.

LUCIEN N. B. WYSE,

Chief of the International Scientific Commission for the Survey of the Isthmus, Member and Delegate from the Board of Directors of the Interoceanic Canal Association.

6.—HISE-SELVA CONVENTION, JUNE 21, 1849.

Special convention between the United States of America and the State of Nicaragua.

The United States of America and the State of Nicaragua, having in view the grand design of opening and establishing through the territories of the latter State a passage and communication between the Caribbean Sea and the Pacific Ocean to facilitate the commerce between the two oceans and to produce other great results, and designing to establish, regulate, and define the grants, rights, privileges, and immunities that shall appertain to each other with reference to such great object by means of a treaty and special convention. For the accomplishment of these desirable purposes the President of the United States of America has conferred full powers on Elijah Hise, chargé d'affaires of the government of said States in Central America, and the State of Nicaragua hath likewise granted full powers to Sr. Lic^do^ Don Bueneventura Selva, chargé d'affaires of the government of the said State of Nicaragua near the United States legation in Central America, who, after having exchanged their said full powers in due and proper form, have agreed and do agree upon the following articles:

ARTICLE I.

It is solemnly agreed between the two high contracting parties that the State of Nicaragua doth grant to and confer upon the United States

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of America, or to a company of the citizens thereof, the exclusive right and privilege to make, construct, and build within the territories of the said State of Nicaragua, through or by the use and means of any of the streams, rivers, bays, harbors, lakes, or lands under the jurisdiction or within the limits of said State, a canal or canals, a road or roads, either railways or turnpikes or any other kind of roads, for the purpose of opening a convenient passage and communication (either by land alone, or water alone, or by both land and water, and by means, if deemed proper, of locks and dams, or by any other mode of overcoming and removing the obstructions to the navigation of the said rivers, lakes, harbors, &c.) between the Caribbean Sea and the Pacific Ocean, for the transit and passage of ships, steamers, sailing-vessels, boats, and vessels of all kinds, as well as vehicles of every sort used for the transportation and conveyance of persons and property and of goods, wares, and merchandise of every description, and the United States or the said company which may be formed by virtue of such charter as shall be made as herein provided shall be permitted for the construction of said works to procure, take, and obtain within the territories of Nicaragua all kinds of materials, such as stone, timber, earths, and whatever else may be necessary and proper for the said purposes, free of any charge so far as the said materials may be procured on the lands belonging to said State.

Article II.

The State of Nicaragua cedes and grants to the United States, or to a chartered company of the citizens thereof, as the case may be, absolutely all the land that may be required for the location and construction of said canal or canals, road or roads, and which may be necessary for the erection of buildings and houses of every description for the residence and accommodation of the engineers, superintendents, and laborers, and all others employed in the making and construction of the said works, or in governing, managing, and controlling the same, and also for the erection of all such necessary buildings as may be requisite and proper for the purpose of storing away therein all the tools, machines, materials, and property of every description which may be required for use in the construction, repairing, preservation, and management of said works, and should any portion of the lands or materials, or of the rivers, bays, ports, or their coasts or lakes, and their shores, which may be necessary and proper to be applied for the location and construction of the said works and its appurtenances, belong to individuals, the State of Nicaragua agrees and undertakes to extinguish the titles thereto, and to procure the same upon a just principle of valuation for the aforesaid public works. The aforesaid cession and grant shall include a space of not less than three hundred feet on each side of the lines of said works, and extending all along the whole length thereof, so that ample space be secured on the margins of said works for the convenient use thereof. The just value of such of said lands and materials as may be private property at the date of this treaty will be paid for by said company.

Article III.

It is agreed that if the Government of the United States shall decide not to undertake and construct the said works, then either the Presi-

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dent or Congress thereof shall have the power and authority to frame, enact, and issue a charter or act of incorporation containing such liberal provisions and such grants of rights and privileges (not inconsistent with the rights of the contracting parties herein secured), as may be necessary, convenient, or proper to effect the great object in view, which charter and act of incorporation shall provide as follows:

1st. That the company which may be formed and organized under and by virtue of its provisions shall be composed exclusively of the citizens of one or both of the contracting parties, who may subscribe for and become the owners of the *whole* of the capital stock required for the said works. If, however, such citizens (thus having the preference) shall fail in due time to subscribe for and become the owners of the whole amount of the said capital stock, the residue thereof not taken by them may be taken, paid in, and owned by the governments of both or either of the contracting parties, or by the governments or citizens of any other nation, kingdom, or country.

2d. That said company shall have the sole and exclusive right and privilege of constructing and owning such works as are herein named within the State of Nicaragua, provided the same are commenced and prosecuted within the time limited in this convention.

3d. It shall authorize the said company to build and construct said canal or canals, in such directions and of such width and depth as they shall in their discretion determine, and if the plan of roads is in part or in whole adopted the route, width, kind, and number thereof shall be determined upon by the said company as they may think proper.

4th. It shall provide that said company may make contracts, sue, and be sued as a corporation, with a given name and style, have a corporate seal, and engage in all such trade and business as may be proper and convenient in promoting all the operations required for the attainment of the ends in view.

5th. It shall contain provisions adequate for the organization of said company; it shall provide for the appointment of the officers, agents, engineers, surveyors, superintendents, and other employés of said company; and that said company may make and adopt all its own by-laws and regulations, so that the same be not in conflict with the provisions of this convention.

6th. It shall provide that said company may not only build and construct, but also enlarge, alter, repair, and reconstruct the said works as they may think proper, and that they may manage and govern the same, and manage and control the financial affairs of the corporation.

7th. It shall provide that said company shall make annual reports to the executive governments of the United States and the State of Nicaragua, setting forth their receipts and expenditures, and the condition, operations, and affairs of the said company.

8th. It shall provide that the management of the affairs of said company shall be vested and lodged in nine managers, five of whom shall be appointed by the company for a period of time, and in a manner to be regulated by the said charter, and in like manner two of the said managers shall be appointed by the President of the United States and two by the Executive Chief of the State of Nicaragua, and the said nine managers shall appoint their own president.

9th. It shall provide that the governments of either of the contracting parties may, through their committees, freely examine and investigate the affairs, business operations, and condition, financial and

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otherwise, of the said company, and for such purpose such committees may examine the books and papers of the company, and examine the officers thereof and other witnesses on oath, and make reports thereon to their respective governments.

10th. It shall provide that said company shall have the sole and exclusive right and privilege of conveying persons and passengers, and of conveying all steamers, ships, and vessels of all kinds, by towage or otherwise, and of transporting in the vessels of others or of their own all property, goods, wares, and merchandise, over, through, and upon said navigable waters, canal or canals, road or roads, which shall be improved, made, or constructed by them, at such rates, charges, duties, and tolls as the said company may think proper to establish; except, however, that the said charter shall further provide that all the vessels of war and all other public vessels of every description belonging to the governments of the two contracting parties, as well also as all other vessels which may be engaged in the permanent or temporary employment of the said governments to transport their troops, munitions of war, their public property of all kinds, and to convey their public agents, consuls, ministers, and all their officers, civil and military, shall be permitted to have the free and unrestricted use of the said canal or canals and navigable waters, and shall if necessary and required be conveyed through the same by the said company free of all costs and charge; said charter shall further provide also that the public mails of the contracting parties shall be conveyed and transported along and over the said works by the said company, in their own vessels or vehicles, free of cost or charge, and the contracting parties agree and stipulate with all solemnity that the aforesaid rights and privileges shall be enjoyed by each other perpetually, and that said charter shall provide accordingly; said charter shall also further provide that the citizens of the two parties shall enjoy and possess the right and privilege with their vessels, goods, merchandise, and property, and persons to pass and be conveyed through, upon, and over the said canals, roads, and navigable waters on terms at least as favorable as the subjects or citizens of any other nation or country.

11th. Said charter shall provide that the said works shall be commenced by said company within ten years after it shall be fully organized under said charter, or otherwise forfeit their privileges; so likewise if they shall after said works are begun declare their intention to abandon them and cease to prosecute the same for four entire successive years intentionally.

ARTICLE IV.

The charter aforesaid may contain such other provisions and grants of rights and privileges not in violation of or in conflict with any of the preceding or subsequent articles of this treaty as may be deemed necessary, convenient, or proper for the objects in view by either the President or Congress of the United States, and the same when framed and issued shall be approved and legalized by the Government of the State of Nicaragua, and no privileges or emoluments shall be granted in said charter to either of the contracting parties which shall not likewise be held and enjoyed to the same extent by the other.

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ARTICLE V.

The Government of the United States shall have the right to erect such forts and fortifications at the ends and along the lines of said works, and to arm and occupy the same in such manner and with as many troops as may be deemed necessary by the said government for the protection and defense thereof, and also for the preservation of the peace and neutrality of the territories of Nicaragua, to whom pertains equal rights as inherent to her sovereignty.

ARTICLE VI.

The public armed vessels, letters of marque, and privateers, and the private merchant and trading vessels belonging either to the governments, or the subjects, or citizens of nations, kingdoms, or countries with which either of the contracting parties may be at war, shall not, during the continuance of such war, be suffered or allowed to come in the ports at the terminations of said canals, nor be allowed to pass on or through the same, on any account whatever; neither shall the vessels of neutral nations, whether public or private, be allowed to convey by means of said canal articles contraband of war, to or for the enemies of either of the contracting parties, or to or for other nations or states who may be at war with each other; nor shall the vessels of countries which are engaged in war with each other, owned or employed and armed by them to carry on such war, during its continuance be allowed to pass through the said canals. The public and private vessels of all nations, kingdoms, and countries which are in peace with both the contracting parties and with each other shall be permitted to enter said ports, and to pass or be conveyed through the said canals, but they shall be subject, however, to the payment of such duties, charges, and tolls as may be established by the proprietors of the said works.

ARTICLE VII.

The State of Nicaragua may, of course, exercise her right of erecting and establishing anywhere on the routes or margins, or at the points of termination of said works, custom-houses and warehouses, and to collect duties, according to her own laws, upon the goods, wares and merchandise imported for sale or consumption into her territories by means of said works, and the State of Nicaragua may adopt and enforce all needful rules and regulations to prevent smuggling or the introduction of contraband goods in her territories; but it is expressly agreed that the State of Nicaragua shall not impose, enforce, or collect any taxes, charges, or duties of any kind or amount on the persons (for passports), or property, or on goods, wares, or merchandise of any class or kind on their travel or transit over, or for passing through her territories by means of said canals, roads, &c., provided the said property, goods, wares, and merchandise shall be not sold or not introduced for sale or consumption into the said State, but be exported to other states or countries.

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Article VIII.

The ports at the points of termination of said works shall be free to both the contracting parties and their citizens, respectively; and their public and private vessels of all kinds shall enter and remain therein and depart therefrom and not be subjected to the payment of any port charges, tonnage duties, or other imposition whatever.

Article IX.

The persons employed in the location and construction of said works, the owners thereof, and all their agents, and officers, and employés of every sort, shall be under the special protection of the governments of both the contracting parties, and they shall not be subject to any kind of taxation on their persons or property, nor shall they be required to pay any contributions or to perform any civil or military duty or service whatever for either of the two governments during their employment about the said works; and all provisions, including wines and liquors, and all merchandise imported into Nicaragua for their clothing and subsistence shall be free and exempt from all duties and taxes, direct or indirect; and all such articles, property, stores, tools, implements, and machines, &c., &c., as may be required for surveys and explorations, and for locating and constructing said works, shall be imported into the State of Nicaragua free from all taxes and duties whatever thereon, and the vessels employed in the importation of the said subsistence, clothing, tools, implements, &c., &c., shall also be free and exempt from all port charges and tonnage duties in all the ports, rivers, lakes, or harbors on the coasts or within the limits of the State of Nicaragua; and entire liberty is to be enjoyed by the said company to make full and complete surveys and explorations of the ports, bays, seas, lakes, rivers, and territories of Nicaragua, in order to the location of said works and for the procurement of lands and materials necessary for the same, in which exploration and surveys Nicaragua, at her own expense, may participate, if she thinks proper.

Article X.

The State of Nicaragua grants and cedes to the United States or to a company to be chartered as herein provided, as the case may be, all the land within two leagues square belonging to the said State, and which may be unappropriated at the date of this treaty, at each point of the terminations of said works at the seas on each side, that is to say, three miles square on each side of both ends of said works, to serve for the sites of two free cities which it is anticipated will hereafter be established at said points, the inhabitants of which free cities shall enjoy the following rights and immunities:

1st. They shall govern themselves by means of their own municipal government, to be administered by officers, legislative, executive, and judicial, chosen and elected by themselves according to their own regulations.

2d. They shall have the right of trial by jury in their own city courts.

3d. They shall have the most perfect freedom of religious belief and of religious worship, public and private.

4th. They shall not be required to pay any tax upon their real estate

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or other property except such as may be imposed by the municipality and collected for the city treasury, and to be used and applied for the benefit of said cities.

5th. They shall not be required to perform any military services, except for the defense of the said cities in which they may reside.

6th. The said cities will of course be under the qualified dominion and government of the State of Nicaragua, not to be exercised in any manner, however, in violation of their rights and immunities as herein specified; and said free cities shall be under the protection of the governments of both the contracting parties.

Article XI.

The State of Nicaragua agrees that the United States shall have, possess, and enjoy forever the following rights and privileges; that is to say, the right and privilege to pass, convey, transport, and send through all or any part of the territories and dominions of the State of Nicaragua, on land or water, from ocean to ocean, by means of her ports, bays, rivers, lakes, and roads, troops, infantry or cavalry, all kinds of arms, artillery, and munitions of war of all kinds, her public property of every description, public officers, civil and military, consuls, ministers, dispatch agents, her public mails and mail agents, and all other employés of the Government of the United States of America; and the same shall all and each be permitted to pass, be sent, and be conveyed through said State, in any manner, as aforesaid, in the public armed vessels of the United States, and in all such other vessels or vehicles, public or private, which may be in the temporary or permanent employment of the Government of the United States for any of the purposes aforesaid, or in any other way, free from all cost and exempt from all taxes, duties, imposts, charges, or exactions of any kind whatever, either on the persons, property, vehicles, or vessels aforesaid; and all the aforesaid privileges and the said free rights of way and of transit shall be held, used, and employed by the United States of America, but not by any other nation, state, or government, except Nicaragua, without cost or charge, and freely, whether the same be made through the dominions and territories of Nicaragua as they now exist, or whether the said troops, munitions of war, public officers, agents, employés, mails, public property, vehicles, and vessels, &c., shall be sent, transported, or conveyed by means of improved navigable rivers, canals, or turnpikes, or railroads, or any other public improvements which may be hereafter made in the State of Nicaragua, either by the governments or citizens of the contracting parties, or by the governments, citizens, or people of any other nation, kingdom, or country; and the citizens of the United States shall have and enjoy al. the rights and privileges of travel, passage, transit, and conveyance for themselves and their property and vessels of all kinds through the territories and dominions of the State of Nicaragua as they now exist or through such canals or roads, railways or turnpikes, or other improvements as may be hereafter made in said State, upon terms and conditions in every particular as favorable as those enjoyed by the citizens of Nicaragua, or by the citizens of any other nation, kingdom, or country.

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Article XII.

In consideration of the premises as set forth in the foregoing eleven articles, the United States of America doth solemnly agree and undertake to protect and defend the State of Nicaragua in the possession and exercise of the sovereignty and dominion of all the country, coasts, ports, lakes, rivers, and territories that may be rightfully under the jurisdiction and within the just and true limits and boundaries of the said State, and when the circumstances and condition of the country may require it the United States shall employ their naval and military force to preserve the peace and maintain the neutrality of the said coasts, ports, lakes, rivers, and territories, and to hold and keep the same under the dominion and sovereignty of the Government of the State of Nicaragua or of the government of such state or political community of which Nicaragua may voluntarily become a member, or with which, of her own accord, she may hereafter be identified: Provided, however, that the said sovereignty and dominion of the State of Nicaragua, so guaranteed as above, shall not be held, maintained, or exercised by said State in any such manner as to conflict or to be inconsistent with the rights and privileges herein secured to the United States and her citizens; and to prevent all misunderstanding, it is expressly stipulated that the United States are not bound, nor do they undertake, to aid, assist, or support Nicaragua in offensive wars or wars of aggression waged and carried on by said State with foreign powers or with the neighboring states, outside of her just limits, and beyond the territories rightfully within her jurisdiction; but the contracting parties agree and undertake that, if necessary, the naval and military forces and the entire means and resources of both the contracting parties shall be employed to put down all wars and bloodshed arising therefrom and to suppress all violations of the peace and interruptions of the neutrality of the said State of Nicaragua; and for further explanation it is understood that if the State of Nicaragua should become involved in a war with any foreign power or neighboring state within her own borders, to defend the territories rightfully belonging to her, or to recover such territories wrongfully wrested from her, the United States engage to aid and defend Nicaragua in carrying on such war within her own rightful limits, provided, however, that such war is just, and provided, moreover, that if peace is prevailing in the State of Nicaragua, no wars or hostilities shall be first commenced in said State by either of the contracting parties without previous friendly consultations, and unless with the consent of both their governments, given according to their laws and constitutions, respectively.

Article XIII.

The contracting parties, in negotiating this treaty, have had in view the contract entered into between the State of Nicaragua, through their commissioner, José Trinidad Muñoz, and a certain company styled "Compania de transito de Nicaragua," composed of certain persons named Williard Parker, Simeon H. Ackerman, Asher Kurshecdt, and David J. Brown, through the said David J. Brown as their agent, which contract was executed and signed by said commissioner and agent on March 14, 1849, and ratified by the legislative power of the State of Nicaragua on March 16, 1849, and approved by the executive

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power of said State on the 17th of March, 1849. Now, in view of this contract, it is further agreed as follows:

1st. If the above-named company shall accede to this treaty *in all its parts*, or if they shall voluntarily abandon their contract, or if they shall forfeit their rights under said contract by failing to perform and execute the terms and conditions thereof in due time, then this treaty shall remain and be valid in all its parts.

2d. But if the said company shall not accede to this treaty *in all its parts*, and if they shall not abandon or forfeit their said contract, but if they shall execute the same and comply with its terms, and build the said works all in the time required, then, in such case, this treaty in all its parts, wherein the State of Nicaraguaa grants to the United States, or to a company to be chartered by the President or Congress thereof, the exclusive privilege to be the constructors and owners of said works shall be void, and of no force or effect.

3d. Nevertheless, in such case as is set forth in the second section next preceding, if said company shall accede to the fifth (5th), the sixth (6th), the eighth (8th), and the eleventh (11th) articles of this treaty, and shall consent and agree that the United States of America, and the citizens thereos, shall have and enjoy all the rights and privileges therein granted to them, and as defined also in the tenth (10th) section of the third (3rd) article, then in such case the above-named fifth, sixth, eighth, and eleventh articles of this treaty, as also the twelfth article thereof, shall be valid and obligatory between the contracting parties.

4th. But if in such case existing as is set forth in the second section above the said company shall refuse to accede or agree to the said fifth (5th), sixth (6th), eighth (8th), and eleventh (11th) articles hereof, as specified in the preceding third section, then this treaty shall be altogether void and of no force or effect whatever.

But the contracting parties, anticipating that said company, being satisfied that the great enterprise in view cannot succeed unless under the protection and patronage of the two governments, will concur and co-operate with them in the promotion thereof, they are assured that this treaty will meet their cordial approbation, and that it will be fully acceded to by them.

The present special convention between the United States of America and the State of Nicaragua shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by the Director of the State of Nicaragua, with the consent of the Legislative Chambers thereof, and the ratifications shall be exchanged in the city of Washington, Santiago de Managua, or Leon, within the term of two years counted from this date.

In faith thereof, we, the plenipotentiaries of the United States of America and of the State of Nicaragua, have signed and sealed these presents in the city of Guatemala, on the twenty-first day of June, in the year of our Lord one thousand eight hundred and forty-nine, in the seventy-third year of the independence of the United States of America, and in the twenty-eighth year of the independence of the State of Nicaragua.

[SEAL.] ELIJAH HISE.
[SEAL.] BUENAVA SELVA.

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7.—CLAYTON-BULWER CONVENTION OF APRIL 19, 1850.

Convention between the United States of America and her Britannic Majesty.

The United States of America and Her Britannic Majesty, being desirous of consolidating the relations of amity which so happily subsist between them, by setting forth and fixing in a convention their views and intentions with reference to any means of communication by ship-canal which may be constructed between the Atlantic and Pacific Oceans by the way of the river San Juan de Nicaragua and either or both of the Lakes of Nicaragua or Managua, to any port or place on the Pacific Ocean, the President of the United States has conferred full powers on John M. Clayton, Secretary of State of the United States, and Her Britannic Majesty on the Right Honorable Sir Henry Lytton Bulwer, a member of her Majesty's most honorable privy council, knight commander of the most honorable Order of the Bath, and envoy extraordinary and minister plenipotentiary of Her Britannic Majesty to the United States, for the aforesaid purpose; and the said plenipotentiaries having exchanged their full powers, which were found to be in proper form, have agreed to the following articles:

Article I.

The Governments of the United States and Great Britain hereby declare that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said ship-canal; agreeing that neither will ever erect or maintain any fortifications commanding the same or in the vicinity thereof, or occupy, or fortify, or colonize, or assume, or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America; nor will either make use of any protection which either affords or may afford, or any alliance which either has or may have to or with any state or people, for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito coast, or any port of Central America, or of assuming or exercising dominion over the same; nor will the United States or Great Britain take advantage of any intimacy, or use any alliance, connection, or influence that either may possess with any state or government through whose territory the said canal may pass, for the purpose of acquiring or holding, directly or indirectly, for the citizens or subjects of the one, any rights or advantages in regard to commerce or navigation through the said canal which shall not be offered on the same terms to the citizens or subjects of the other.

Article II.

Vessels of the United States or Great Britain traversing the said canal shall, in case of war between the contracting parties, be exempted from blockade, detention, or capture by either of the belligerents; and this provision shall extend to such a distance from the two ends of the said canal as may hereafter be found expedient to establish.

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ARTICLE III.

In order to secure the construction of the said canal, the contracting parties engage that if any such canal shall be undertaken upon fair and equitable terms by any parties having the authority of the local government or governments through whose territory the same may pass, then the persons employed in making the said canal, and their property used, or to be used, for that object, shall be protected, from the commencement of the said canal to its completion, by the Governments of the United States and Great Britain, from unjust detention, confiscation, seizure, or any violence whatsoever.

ARTICLE IV.

The contracting parties will use whatever influence they respectively exercise with any state, states, or governments, possessing or claiming to possess any jurisdiction or right over the territory which the said canal shall traverse, or which shall be near the waters applicable thereto, in order to induce such states or governments to facilitate the construction of the said canal by every means in their power. And furthermore, the United States and Great Britain agree to use their good offices, wherever or however it may be most expedient, in order to procure the establishment of two free ports, one at each end of the said canal.

ARTICLE V.

The contracting parties further engage, that when the said canal shall have been completed, they will protect it from interruption, seizure, or unjust confiscation, and that they will guarantee the neutrality thereof, so that the said canal may forever be open and free, and the capital invested therein secure. Nevertheless, the Governments of the United States and Great Britain, in according their protection to the construction of the said canal, and guaranteeing its neutrality and security when completed, always understand that this protection and guarantee are granted conditionally, and may be withdrawn by both governments, or either government, if both governments, or either government, should deem that the persons or company undertaking or managing the same adopt or establish such regulations concerning the traffic thereupon as are contrary to the spirit and intention of this convention, either by making unfair discriminations in favor of the commerce of one of the contracting parties over the commerce of the other, or by imposing oppressive exactions or unreasonable tolls upon passengers, vessels, goods, wares, merchandise, or other articles. Neither party, however, shall withdraw the aforesaid protection and guarantee without first giving six months' notice to the other.

ARTICLE VI.

The contracting parties in this convention engage to invite every state with which both or either have friendly intercourse to enter into stipulations with them similar to those which they have entered into with each other, to the end that all other states may share in the honor and advantage of having contributed to a work of such general interest and importance as the canal herein contemplated. And the contracting

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parties likewise agree that each shall enter into treaty stipulations with such of the Central American States as they may deem advisable, for the purpose of more effectually carrying out the great design of this convention, namely, that of constructing and maintaining the said canal as a ship communication between the two oceans for the benefit of mankind, on equal terms to all, and of protecting the same; and they also agree, that the good offices of either shall be employed, when requested by the other, in aiding and assisting the negotiation of such treaty stipulations; and should any differences arise as to right or property over the territory through which the said canal shall pass between the states or governments of Central America, and such differences should in any way impede or obstruct the execution of the said canal, the Governments of the United States and Great Britain will use their good offices to settle such differences in the manner best suited to promote the interests of the said canal, and to strengthen the bonds of friendship and alliance which exist between the contracting parties.

ARTICLE VII.

It being desirable that no time should be unnecessarily lost in commencing and constructing the said canal, the Governments of the United States and Great Britain determine to give their support and encouragement to such persons or company as may first offer to commence the same, with the necessary capital, the consent of the local authorities, and on such principles as accord with the spirit and intention of this convention; and if any persons or company should already have, with any state through which the proposed ship canal may pass, a contract for the construction of such a canal as that specified in this convention, to the stipulations of which contract neither of the contracting parties in this convention have any just cause to object, and the said person or company shall moreover have made preparations, and expended time, money, and trouble, on the faith of such contract, it is hereby agreed that such persons or company shall have a priority of claim over every other person, persons, or company to the protection of the Governments of the United States and Great Britain, and be allowed a year from the date of the exchange of the ratifications of this convention for concluding their arrangements, and presenting evidence of sufficient capital subscribed to accomplish the contemplated undertaking; it being understood that if, at the expiration of the aforesaid period, such persons or company be not able to commence and carry out the proposed enterprise, then the Governments of the United States and Great Britain shall be free to afford their protection to any other persons or company that shall be prepared to commence and proceed with the construction of the canal in question.

ARTICLE VIII.

The Governments of the United States and Great Britain having not only desired, in entering into this convention, to accomplish a particular object, but also to establish a general principle, they hereby agree to extend their protection, by treaty stipulations, to any other practicable communications, whether by canal or railway, across the isthmus which connects North and South America, and especially to

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the inter-oceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by the way of Tehuantepec or Panama. In granting, however, their joint protection to any such canals or railways as are by this article specified, it is always understood by the United States and Great Britain that the parties constructing or owning the same shall impose no other charges or conditions of traffic thereupon than the aforesaid governments shall approve of as just and equitable; and that the same canals or railways, being open to the citizens and subjects of the United States and Great Britain on equal terms, shall also be open on like terms to the citizens and subjects of every other state which is willing to grant thereto such protection as the United States and Great Britain engage to afford.

Article IX.

The ratifications of this convention shall be exchanged at Washington within six months from this day, or sooner if possible.

In faith whereof, we, the respective plenipotentiaries, have signed this convention, and have hereunto affixed our seals.

Done at Washington, the nineteenth day of April, anno Domini one thousand eight hundred and fifty.

JOHN M. CLAYTON. [L. S.]
HENRY LYTTON BULWER. [L. S.]

8.—PROPOSED BASIS OF AN ARRANGEMENT FOR SETTLING CENTRAL AMERICAN AFFAIRS. CRAMPTON-WEBSTER.

WASHINGTON, *April* 30, 1852.

The undersigned, Daniel Webster, Secretary of State of the United States, and John Fiennes Crampton, Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty, having taken into consideration the state of the relations between the Republics of Costa Rica and Nicaragua in respect to the boundaries between those republics, and between the Republic of Nicaragua and the territory claimed by the Mosquito Indians; and being mutually desirous that all pending differences respecting those questions should be amicably, honorably, and definitely adjusted, do in behalf of their respective governments earnestly recommend to the respective governments of the Republics of Nicaragua and Costa Rica an accommodation and settlement of these differences upon the following basis:

Article I.

The Mosquito Indians may reserve to themselves out of the territory heretofore claimed or occupied by them on the eastern coast of Central America, a district of country, and the jurisdiction over the same to be bounded as follows, namely: beginning on the shore of the Caribbean Sea at the mouth of the river Rama, which is (according to Bailey's map of Central America, published in London in November, 1850) in 11° 34′ north latitude and 83° 46′ west longitude; running

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thence due west to the meridian 84° 30′ west longitude from Greenwich; thence due north on said meridian to the river Segovia, Fantasma, or Wanx; thence down said river to the Caribbean Sea; thence southerly along the shore of said sea to the place of beginning; and all the rest and remainder of the territory and lands lying southerly or westerly of said reservation heretofore occupied or claimed by the said Mosquitos, including Greytown, they shall relinquish and cede to the Republic of Nicaragua, together with all jurisdiction over the same in consideration of the net receipts for a period of three years from all duties levied and collected at Greytown at the rate of 10 per cent. ad valorem on all goods imported into the State.

The period of three years to commence on the day when Nicaragua shall formally take possession of and enter into the occupancy of said town. And the said net receipts shall be payable quarterly, or every three months, to such agent or agents as may be appointed to receive them.

And the said Republic of Nicaragua hereby agrees not in any way to molest or interfere with the Mosquito Indians within the territory herein reserved by them.

It is also understood that any grants of land which may have been made by the said Mosquitoes since the 1st of January, 1848, in that part of the Mosquito territory hereby ceded to Nicaragua, shall not be disturbed, provided the said grants shall not interfere with other legal grants made previously to that date by Spain, by the Central American Confederation, or by Nicaragua, or with the privileges or operations of the Atlantic Ship-Canal Company, or Accessory Transit Company, and shall not include territory desired by the Nicaraguan Government for forts, arsenals, or other public buildings.

II.

It is also understood that nothing in the preceding article shall preclude the conclusion of such voluntary compact and arrangements between the State of Nicaragua and the Mosquito Indians, by which the latter may be definitively incorporated and united with the State of Nicaragua, it being stipulated that in such case the said Mosquito Indians shall enjoy the same rights and be liable to the same duties as the other citizens of the said State of Nicaragua. The municipal and public authority in the town of Greytown shall be held and exercised by the Government of Nicaragua, but said Government shall levy no duties of tonnage nor any duties of import on goods imported into Greytown, intended for transit across the Isthmus or for consumption in any other state than that of Nicaragua, except such tonnage duty as may be necessary for the preservation of the port and harbor and the erection and maintenance of necessary light-houses and beacons, and no duty for this or similar purposes shall exceed say 12 cents per ton on each vessel.

III.

The boundary between the Republics of Nicaragua and Costa Rica shall begin on the south bank of the Colorado at its confluence with the sea at high-water mark on said river; thence along said south bank, also at high-water mark, to the confluence of the Colorado with the the

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river San Juan; thence, at high-water mark, along the south bank of the San Juan to its source on Lake Nicaragua; thence, at high-water mark, along the south and west shore of that lake to the point nearest the mouth of the river La Flor; thence by a direct line drawn from that point to the mouth of the said river in the Pacific Ocean. It is understood, however, that Costa Rica retains the right, in common with Nicaragua, to navigate said rivers and lake by said vessels, barges, or vessels towed, but not by steam; but this right is by no means to interfere with the paramount right in Nicaragua or her grantors to appropriate the waters of said rivers and lake for a ship-canal from ocean to ocean or from the Caribbean Sea to said lake.

It is also understood that the said company entitled "The American Atlantic and Pacific Ship-Canal Company" shall have the privilege of locating on the south bank of the St. John River four of the eight stations or sections of land referred to in the XXVIIth article of the amended charter of said company, as rectified by the Government of Nicaragua on the 11th of April, 1850. If, however, the said company should desire to locate more than the said four sections on the south side of the San Juan, the Governments of Nicaragua and Costa Rica will amicably agree in regard to the terms of such location.

IV.

Neither the Government of Nicaragua nor the Government of Costa Rica should be at liberty to erect, or suffer to be erected, any wharf, wall, embankment, or other structure, or to do, or suffer to be done, any thing or act whatever, in the harbor of Greytown, in any part of the Colorado or San Juan Rivers, or on the shore of Lake Nicaragua, which shall obstruct the free operations of the ship-canal or transit company, or hinder the passage of their boats in, along, and through the said harbor of Greytown and rivers Colorado or San Juan. And if, after the proper survey of a route for a ship-canal between the two oceans, it shall be found that it would be preferable for that canal to pass in part along the southern bank of the river San Juan or the Colorado River, the Government of Costa Rica engages to grant any lands and to afford any facilities which may be necessary for the construction of the said canal.

V.

Whereas it is stipulated by Article II of the convention between Great Britain and the United States of America, concluded at Washington on the 19th day of April, 1850, that vessels of the United States or Great Britain traversing the said canal shall, in case of war between the contracting parties, be exempt from blockade, detention, or capture by either of the belligerents, and that that provision should extend to such a distance from the two ends of the said canal as might thereafter be found expedient to establish; now, for the purpose of establishing such distance within which the vessels of either of said nations shall be exempt from blockade, detention, or capture by either of the belligerents, it is hereby declared that it shall extend to all waters within the distance of twenty-five nautical miles from the termination of said canal on the Pacific and on the Atlantic coasts.

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VI.

Whereas by Article VII of the said convention it was among other things stipulated that if any persons or company had already made with any state through which the ship-canal might pass, a contract for the construction of such a canal as that specified in said convention, to the stipulations of which neither of the contracting parties in that convention had any just cause to object; and the said persons or company had moreover made preparations and expended time, money, and trouble on the faith of such contract, it was thereby agreed that such persons or company should have a priority of claim over every other person or persons, or company, to the protection of the Governments of the United States and Great Britain, and should be allowed a year from the date of the exchange of ratifications of that convention for concluding their arrangements, and presenting evidence of sufficient capital subscribed to accomplish the contemplated undertaking; it being understood that if at the expiration of the aforesaid period, such persons or company should not be able to commence and carry out the proposed enterprise, then the Governments of the United States and Great Britain should be free to afford their protection to any other persons or company that should be prepared to commence and proceed with the construction of the canal in question. And whereas at the time of the signature of the said convention, a company styled the American Atlantic and Pacific Ship-Canal Company had with the Government of the Republic of Nicaragua a contract for constructing a ship-canal between the said oceans, but, for reasons deemed sufficient by the Governments of Great Britain and the United States, have not hitherto been able to comply with the stipulation which gave them a claim to the protection of the said governments; and whereas no other company has claimed such protection on the same conditions, it is therefore agreed that the further time of one year from the exchange of the ratifications of this convention shall be allowed to the said company to comply with the stipulation aforesaid.

VII.

And whereas by another charter (of April 11, 1850) to the American Atlantic and Pacific Ship-Canal Company, the State of Nicaragua, with a view to facilitate the construction of the canal, has authorized the said company to separate from their said contract of September 22, 1849, the part relating to the navigation of the waters of Nicaragua by steam, under the title of the Accessory Transit Company; and whereas the said Accessory Transit Company has been for some time past in full and successful operation, the Governments of Great Britain and the United States hereby engage to extend their protection to the said Accessory Transit Company in the same manner and to the same extent as by the aforesaid convention of April 19, 1850, and by this convention the said protection is extended to the Atlantic and Pacific Ship-Canal Company; but as the main object of the said convention between Great Britain and the United States of America was to provide for an interoceanic ship-canal between the Atlantic and Pacific, and as that object is still deemed paramount to every other mode of transit, the protection hereby extended to the Accessory Transit Company shall not be construed to interfere with the right to

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construct said canal by the company which has undertaken to construct the same, or, in case of their failure, by any other persons or company which may be authorized to construct the same; and every grant and privilege conferred upon said Accessory Transit Company shall be subject to the paramount right and privilege of any other persons or company to construct, maintain, and use such canal.

Finally, these propositions, so far as they respect the Governments of Nicaragua and Costa Rica, are advisory and recommendatory; and the immediate consideration of those governments to their consideration is earnestly invoked.

To insure a prompt decision, Mr. Wyke, consul-general of Her Britannic Majesty, clothed with full powers for that purpose, Mr. Kerr, chargé d'affaires of the United States to Nicaragua, and Mr. Walsh, appointed special agent of the United States to the Government of Costa Rica, are authorized to communicate the arrangement proposed to those Governments respectively; and, unless the aforesaid Governments of Nicaragua and Costa Rica shall promptly, and without loss of time, concur in the general basis of this arrangement, and adopt proper measures for carrying it into effect, then the Governments of Great Britain and the United States will immediately, as between themselves, jointly adopt such measures as they shall deem advisable to carry into full execution the convention between those Governments of April 19, 1850; and to accomplish the design therein contemplated, of an interoceanic communication by canal from the Atlantic to the Pacific Ocean by the way of the river San Juan and the Lake Nicaragua.

JOHN F. CRAMPTON.
DANL. WEBSTER.

9.—CASS—YRISARRI TREATY. NOVEMBER 16, 1857.

The Republic of Nicarauga and the United States of America, being desirous to maintain with each other the most friendly relations, to promote the commercial intercourse of their respective citizens, and to make some mutual arrangement with respect to a communication between the Atlantic and Pacific Oceans by the river San Juan de Nicaragua and either or both the lakes of Nicaragua or Managua, or by any other route through the territories of said Republic of Nicaragua, have deemed it expedient to conclude a treaty of friendship, commerce and navigation, and for this purpose have named the following plenipotentaries, that is to say:

The Republic of Nicaragua, Antonio José de Yrisarri, her envoy extraordinary and minister plenipotentiary in the United States of America;

And the President of the United States of America, Lewis Cass, Secretary of State of the United States; who, after having communicated to each other their full powers, found to be in due and proper form, have agreed upon and concluded the following articles:

Article I.

There shall be perpetual amity between the United States and their citizens, on the one part, and the Government of the Republic of Nicaragua and its citizens on the other.

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Article II.

There shall be, between all the territories of the United States and the territories of the Republic of Nicaragua, a reciprocal freedom of commerce. The subjects and citizens of the two countries, respectively, shall have full liberty, freely and securely, to come, with their ships and cargoes, to all places, ports, and rivers, in the territories aforesaid, to which other foreigners are, or may be, permitted to come, to enter into the same, and to remain and reside in any part thereof, respectively; also, to hire and occupy houses and warehouses for the purpose of their commerce; and generally the merchants and traders of each nation, respectively, shall enjoy the most complete protection and security for their commerce, subject always to the laws and statutes of the two countries respectively.

In like manner the respective ships of war and post-office packets of the two countries shall have liberty, freely and securely, to come to all harbors, rivers, and places to which other foreign ships of war and packets are, or may be, permitted to come, to enter the same, to anchor, and to remain there and refit, subject always to the laws and statutes of the two countries respectively.

By the right of entering places, ports, and rivers, mentioned in this article, the privilege of carrying on the coasting trade is not understood, in which trade national vessels only, of the country where the trade is carried on, are permitted to engage.

Article III.

It being the intention of the two high contracting parties to bind themselves, by the preceding articles, to treat each other on the footing of the most favored nation, it is hereby agreed between them that any favor, privilege, or immunity whatever, in matters of commerce and navigation, which either contracting party has actually granted, or may grant hereafter, to the subjects or citizens of any other state, shall be extended to the subjects of the other contracting party gratuitously, if the concession in favor of that other nation shall have been gratuitous, or in return for a compensation, as nearly as possible, of proportionate value and effect, to be adjusted by mutual agreement if the concession shall have been conditional.

Article IV.

No higher nor other duties shall be imposed on the importation into the territories of the United States of any article being the growth, produce, or manufacture of the Republic of Nicaragua, and no higher or other duties shall be imposed on the importation into the territories of the Republic of Nicaragua of any articles being the growth, produce, or manufacture of the territories of the United States than are, or shall be, payable upon the like articles being the growth, produce, or manufacture of any other foreign country; nor shall any other or higher duties or charges be imposed in the territories of either of the high contracting parties on the exportation of any articles to the territories of the other than such as are, or may be, payable on the exportation of the like articles to any other foreign country; nor shall any prohibition be imposed upon the exportation or importation of any articles

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the growth, produce, or manufacture of the territories of the United States or the Republic of Nicaragua, to or from the said territories of the United States, or to or from the Republic of Nicaragua, which shall not equally extend to all other nations.

Article V.

No higher or other duties or payments, on account or tonnage, of light or harbor dues, or pilotage, of salvage in case of either damage or shipwreck, or on account of any local charges, shall be imposed in any of the ports of Nicaragua on vessels of the United States than those payable by Nicaraguan vessels; nor in any of the ports of the United States on Nicaraguan vessels than shall be payable in the same ports on vessels of the United States.

Article VI.

The same duties shall be paid on the importation into the territories of the Republic of Nicaragua of any article being the growth, produce, and manufacture of the territories of the United States, whether such importations shall be made in Nicaraguan vessels or in vessels of the United States; and the same duties shall be paid on the importation into the territories of the United States of any article being the growth, produce, or manufacture of the Republic of Nicaragua, whether such importation shall be made in United States or Nicaraguan vessels.

The same dues shall be paid and the bounties and drawbacks allowed on the exportation to the Republic of Nicaragua of any articles being the growth, produce, or manufacture of the territories of the United States, whether such exportation shall be made in Nicaraguan or United States vessels; and the same duties shall be paid and the same bounties and drawbacks allowed on the exportation of any articles being the growth, produce, or manufacture of the Republic of Nicaragua to the territories of the United States, whether such exportation shall be made in the vessels of the United States or of Nicaragua.

Article VII.

All merchants, commanders of ships, and others, citizens of the United States, shall have full liberty in all the territories of the Republic of Nicaragua to manage their own affairs themselves, as permitted by the laws, or to commit them to the management of whomsoever they please, as broker, factor agent, or interpreter; nor shall they be obliged to employ any other persons in those capacities than those employed by Nicaraguans, nor to pay them any other salary or remuneration than such as is paid in like cases by Nicaraguan citizens; and absolute freedom shall be allowed in all cases to the buyer and seller to bargain and fix the price of any goods, wares, or merchandise imported into, or exported from, the Republic of Nicaragua, as they shall see good, observing the laws and established customs of the country.

The same privileges shall be enjoyed in the territories of the United States by the citizens of the Republic of Nicaragua under the same conditions.

The citizens of the high contracting parties shall reciprocally receive and enjoy full and perfect protection for their persons and property,

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and shall have free and open access to the courts of justice in said countries, respectively, for the prosecution and defense of their just rights; and they shall be at liberty to employ, in all cases, the advocates, attorneys, or agents, of whatever description, whom they may think proper and they shall enjoy, in this respect, the same rights and privileges therein as native citizens.

Article VIII.

In whatever relates to the police of the ports, the lading and unlading of ships, the safety of the merchandise, goods, and effects; the succession to personal estates, by will or otherwise; and the disposal of personal property of every sort and denomination, by sale, donation, exchange, testament, or any other manner whatsoever, as also the administration of justice, the citizens of the two high contracting parties shall reciprocally enjoy the same privileges, liberties, and rights as native citizens; and they shall not be charged, in any of these respects, with any higher imposts or duties than those which are, or may be, paid by native citizens, submitting, of course, to the local laws and regulations of each country, respectively.

The foregoing provisions shall be applicable to real estate situated within the States of the American Union or within the Republic of Nicaragua, in which foreigners shall be entitled to hold or inherit real estate.

But in case real estate situated within the territories of one of the contracting parties should fall to a citizen of the other party, who, on account of his being an alien, could not be permitted to hold such property in the state in which it may be situated, there shall be accorded to the said heir, or other successor, such term as the laws of the state will permit to sell such property; he shall be at liberty at all times to withdraw and export the proceeds thereof without difficulty, and without paying to the government any other charges than those which, in a similar case, would be paid by an inhabitant of the country in which the real estate may be situated.

If any citizen of either of the two high contracting parties shall die without a will or testament in any of the territories of the other, the minister or consul or other diplomatic agent of the nation to which the deceased belonged (or the representative of such minister or consul or other diplomatic agent, in case of absence), shall have the right to nominate curators to take charge of the property of the deceased, so far as the laws of the country will permit, for the benefit of the lawful heirs and creditors of the deceased, given proper notice of such nomination to the authorities of the country.

Article IX.

1. The citizens of the United States residing in Nicaragua, or the citizens of Nicaragua residing in the United States, may intermarry with the natives of the country, hold and possess, by purchase, marriage, or descent, any estate, real or personal, without thereby changing their national character, subject to the laws which now exist or may be enacted in this respect.

2. The citizens of the United States residents in the Republic of Nicaragua, and the citizens of Nicaragua residents in the United

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States, shall be exempted from all forced (or compulsory) military service whatsoever, by land or sea; from all contributions of war, military exactions, forced loans in time of war; but they shall be obliged in the same manner as the citizens of each nation to pay lawful taxes, municipal and other modes of imposts and ordinary charges, loans, and contributions in time of peace (as the citizens of the country are liable, in just proportion to the property owned.

3. Nor shall the property of either, of any kind, be taken for any public object, without full and just compensation to be paid in advance; and

4. The citizens of each of the two high contracting parties shall have the unlimited right to go to any part of the territories of the other, and in all cases enjoy the same security as the natives of the country where they reside, with the condition that they duly observe the laws and ordinances.

ARTICLE X.

It shall be free for each of the two high contracting parties to appoint consuls for the protection of trade, to reside in any of the territories of the other party.

But before any consul shall act as such, he shall, in the usual form, be approved and admitted by the government to which he is sent, and either of the high contracting parties may except from the residence of consuls such particular places as they judge fit to be excepted.

The diplomatic agents of Nicaragua and consuls shall enjoy in the territories of the United States whatever privileges, exemptions, and immunities whatever as are, or shall be, allowed to the agents of the same rank belonging to the most favored nation; and, in like manner, the diplomatic agents and consuls of the United States in Nicaragua, shall enjoy, according to the strictest reciprocity, whatever privileges, exemptions, and immunities that are, or may be, granted in the Republic of Nicaragua to the diplomatic agents and consuls of the most favored nations.

ARTICLE XI.

For the better security of commerce between the citizens of the United States and the citizens of Nicaragua it is agreed that if at any time any interruption of friendly intercourse or any rupture should unfortunately take place between the two high contracting parties, the citizens of either, who may be within the territories of the other, shall, if residing on the coast, be allowed six months, and if in the interior, a whole year, to wind up their accounts and dispose of their property; and a safe conduct shall be given to them to embark at any port they themselves may select. Even in case of a rupture all such citizens of either of the high contracting parties, who are established in any of the territories of the other in trade or other employment, shall have the privilege of remaining and of continuing such trade or employment without any manner of interruption, in the full enjoyment of liberty and property, so long as they behave peacefully and commit no offense against the laws, and their goods and effects, of whatever description they may be, whether in their own custody or intrusted to individuals, or to the state, shall not be liable to seizure or sequestration nor to any other charges or demands than those which may be made upon the like effects or property belonging to the native citizens of the country in which such citizens may reside. In the same case, debts between

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individuals, property out in public funds, and shares of companies, shall never be confiscated nor detained.

ARTICLE XII.

The citizens of the United States and the citizens of the Republic of Nicaragua, respectively, residing in any of the territories of the other party shall enjoy in their houses, persons, and property the protection of the government, and shall continue in possession of the guarantees which they now enjoy. They shall not be disturbed, molested, or annoyed in any manner on account of their religious belief, nor in the proper exercise of their religion, agreeably to the system of tolerance established in the territories of the high contracting parties, provided they respect the religion of the nation in which they reside, as well as the constitution, laws, and customs of the country.

Liberty shall be also granted to bury the citizens of either of the two high contracting parties who may die in the territories aforesaid, in burial places of their own, which, in the same manner, may be freely established and maintained; nor shall the funerals or sepulchres of the dead be disturbed in any way or upon any account.

ARTICLE XIII.

Whenever the citizens of either of the contracting parties shall be forced to seek refuge or asylum in the rivers, bays, ports, or dominions of the other, with their vessels, whether merchant or war, public or private, through stress of weather, pursuit of pirates or enemies, or want of provisions or water, they shall be received and treated with humanity and given all favor and protection for repairing their vessels, procuring provisions and placing themselves in all respects in a condition to continue their voyage without obstacle or hindrance of any kind.

ARTICLE XIV.

The Republic of Nicaragua hereby grants to the United States, and to their citizens and property, the right of transit between the Atlantic and Pacific Oceans through the territories of that republic on any route of communication, natural or artificial, whether by land or water, which may now or hereafter exist or be constructed under the authority of Nicaragua to be used and enjoyed, in the same manner and upon equal terms by both republics and their respective citizens, the Republic of Nicaragua, however, reserving its rights of sovereignty over the same.

ARTICLE XV.

The United States hereby agree to extend their protection to all such routes of communication as aforesaid, and to guarantee the neutrality of the same. They also agree to employ their influence with other nations to induce them to guarantee such neutrality and protection.

And the Republic of Nicaragua on its part undertakes to establish two free ports, one at each of the extremities of the communications aforesaid on the Atlantic and Pacific Oceans. At these ports no tonnage or other duties shall be imposed or levied by the Government of Nicaragua on the vessels of the United States, or on any effects or merchandise belonging to citizens or subjects of the United States, or upon the vessels or effects of any other country intended *bona fide* for transit across the said routes of communication and not for consumption, within the Republic of Nicaragua.

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The United States shall also be at liberty to carry troops and munitions of war in their own vessels or otherwise to either of the said free ports, and shall be entitled to their conveyance between them without obstruction by the authorities of Nicaragua, and without any charges or tolls whatever for their transportation on either of said routes of communication. And no higher or other charges or tolls shall be imposed on the conveyance or transit of persons or property of citizens or subjects of the United States or of any other country across the said routes of communication than are or may be imposed on the persons and property of citizens of Nicaragua. And the Republic of Nicaragua recognizes the right of the Postmaster-General of the United States to enter into contracts with any individuals or companies to transport the mails of the United States along the said routes of communication, or along any other routes across the isthmus, in its discretion, in closed bags, the contents of which may not be intended for distribution within the said republic, free from the imposition of all taxes or duties by the Government of Nicaragua; but this liberty is not to be construed so as to permit such individuals or companies, by virtue of this right to transport the mails, to carry also passengers or freight.

Article XVI.

The Republic of Nicaragua agrees that, should it become necessary at any time to employ military force for the security and protection of persons and property passing over any of the routes aforesaid, it will employ the requisite force for that purpose; but, upon failure to do this for any cause whatever, the Government of the United States may, after notice to the Government of Nicaragua, or to the minister thereof in the United States, employ such force, for this and for no other purpose; and when the necessity ceases, such force shall be immediately withdrawn.

Article XVII.

It is understood, however, that the United States, in according protection to such routes of communication, and guaranteeing their neutrality and security, always intend that the protection and guarantee are granted conditionally, and may be withdrawn if the United States should deem that the persons or company undertaking or managing the same adopt or establish such regulations concerning the traffic thereupon as are contrary to the spirit and intention of this treaty, either by making unfair discrimination in favor of the commerce of any nation or nations over the commerce of any other nation or nations, or by imposing oppressive exactions or unreasonable tolls upon mails, passengers, vessels, goods, wares, merchandise, or other articles.

The aforesaid protection and guarantee shall not, however, be withdrawn by the United States without first giving six months' notice to the Republic of Nicaragua.

Article XVIII.

And it is further understood and agreed that in any grants or contracts which may hereafter be made or entered into by the Government of Nicaragua having reference to the interoceanic routes above referred to, or either of them, the rights and privileges granted by this convention to the Government and citizens of the United States shall be

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fully protected and reserved. And if any such grants or contracts now exist of a valid character, it is further understood that the guarantee and protection of the United States stipulated in Article XV of this treaty shall be held inoperative and void until the holders of such grants or contracts shall recognize the concessions made in this treaty to the Government and citizens of the United States with respect to such interoceanic routes, or either of them, and shall agree to observe and be governed by those concessions as fully as if they had been embraced in their original grants or contracts; after which recognition and agreement, said guarantee and protection shall be in full force; provided that nothing herein contained shall be construed either to affirm or deny the validity of any of the said contracts.

Article XIX.

After ten years from the completion of a railroad or any other route of communication through the territory of Nicaragua, from the Atlantic to the Pacific Ocean, no company which may have constructed or be in possession of the same shall ever divide, directly or indirectly, by the issue of new stock, the payment of dividends, or otherwise, more than fifteen per cent. per annum, or at that rate, to its stockholders from tolls collected thereupon; but whenever the tolls shall be found to yield a larger profit than this, they shall be reduced to the standard of fifteen per cent. per annum.

Article XX.

It is understood that nothing contained in this treaty shall be construed to affect the claim of the government and citizens of the Republic of Costa Rica to a free passage by the San Juan River for their persons and property to and from the ocean.

Article XXI.

The two high contracting powers, desiring to make this treaty as durable as possible, agree that this treaty shall remain in full force for the term of twenty years from the day of the exchange of the ratifications; and either party shall have the right to notify the other of its intention to terminate, alter, or reform this treaty, at least twelve months before the expiration of the twenty years; if no such notice be given, then this treaty shall continue binding beyond the said time, and until twelve months shall have elapsed from the day on which one of the parties shall notify the other of its intention to alter, reform, or abrogate this treaty.

Article XXII.

The present treaty shall be ratified, and the ratifications exchanged, at Washington City, within the space of nine months, or sooner, if possible.

In witness whereof the respective plenipotentiaries have signed the same, and affixed thereto their respective seals.

Done at the city of Washington, this sixteenth of November, in the year of our Lord one thousand eight hundred and fifty-seven.

LEWIS CASS.
A. J. DE YRISARRI.

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[Inclosure No. 9—2.]

Mr. Cass to Lord Napier.

DEPARTMENT OF STATE,
Washington, April 6, 1858.

MY LORD: Your recent communications in reference to an adjustment of the Central American questions make it necessary that I should correct a misapprehension which seems to be entertained by Her Majesty's Government concerning the views of the President on the subject.

The President has always regretted the differences between the United States and Great Britain, which have grown out of their different constructions of the "Clayton-Bulwer treaty," and has been sincerely desirous to see them amicably arranged.

In proof of this friendly disposition, he gave his sanction to the Dallas-Clarendon treaty of 1856, as amended by the Senate, notwithstanding the objections which your lordship is aware he entertained to some of its provisions. When this treaty had failed in consequence of the refusal of Great Britain to ratify it in its amended form, he was confidentially informed by your lordship, on the 19th of October last, in an interview which you had sought for the purpose, "that Her Majesty's Government had considered the several alternatives of action which were open to their selection, and, in a review of the whole case, had resolved to dispatch a representative of authority and experience to Central America, charged to make a definite settlement of all the matters with regard to which the United States and England are still at variance." Your lordship added that Sir William Gore Ouseley had been selected as the representative, and that while you were unable to explain the precise character of his instruction, you "believed it was the intention of Her Majesty's Government to carry the Clayton-Bulwer treaty into execution according to the general tenor of the interpretation put upon it by the United States, but to do so by separate negotiations with the Central American republics in lieu of a direct negotiation with the Federal Government."

In reply to this communication you were assured by the President that "if the resolutions of Her Majesty's Government were such as you had related, and they really meant to execute the Clayton-Bulwer treaty according to the American interpretation, this was as much as he could insist upon," and "to him it was indifferent whether the concession contemplated by Her Majesty's Government were consigned to a direct engagement between England and the United States or to treaties between the former and the Central American Republics." In a reply to a further suggestion of your lordship in respect to what might be the character of his message to Congress on this subject, he finally stated that if before the meeting of Congress he should receive an official announcement on the subject such as he could use he would refer to Sir William Ouseley's mission in his message, and nothing would give him greater pleasure than to add the expression of his sincere and ardent wish for the maintenance of friendly relations between the two countries."

The President also distinctly stated, in reference to some apprehension expressed by your lordship lest the mission of Sir William Ouseley might be frustrated by an attempt in Congress to annul the treaty, an

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attempt which your lordship thought would have a "calamitous influence on the future relations of England and America," that under the circumstances here described no attempt against the Clayton-Bulwer treaty would have any countenance from him whatever. He did not fail, however, to point out to your lordship that no stipulations in respect to the Bay Islands similar to those contained in the convention then pending between Great Britain and Honduras would be regarded by the American Government as a satisfactory compliance with the Clayton-Bulwer treaty, and your lordship, in return, allowed that the articles establishing the administrative independence of the islands might have been larger than was necessary, "but made no doubt Her Majesty's Government would entertain any reasonable suggestions which might be offered them in that sense, and Sir William Ouseley would probably have power to enter upon it (the discussion) in a liberal spirit." According to your lordship's account of the interview, of which I have freely availed myself in this narrative, you thanked the President for his assurances and expressed your hope that your lordship (Lord Clarendon) would be enabled to make a full communication of Sir William Ouseley's instructions to the American Cabinet, and even to direct that minister to visit Washington on his way to Central America if His Excellency (the President) thought such a step desirable.

In a second interview with the President, on the 24th of October, your lordship reiterated your "belief that the instructions of Sir William Ouseley would, in fact, enable him to sanction the execution of the treaty by direct arrangements with the Central American Republics, in conformity with the general tenor of the interpretation placed upon them by the United States," and then proceeded to suggest how important it was, therefore, "to know what is the sense attached to the Clayton-Bulwer treaty by the Government of the United States." These expressions were met by the President in the same friendly spirit which he had manifested at the previous interview, and while, in response to your lordship's suggestion, he did not fail to mention what he regarded as the leading requirements of the Clayton-Bulwer treaty according to the American construction of it, he withdrew nothing of his previous assurance that an adjustment of the Central American questions according to that construction would be entirely acceptable to him, whether this adjustment should be made by direct negotiation with the Central American States or by a treaty between the United States and Great Britain.

Similar views to those which were thus expressed by your lordship in these conversations had been previously communicated to me in the same confidential manner, and by me reported to the President.

On the 30th of November, however, I received from your lordship a notice of Sir William Ouseley's mission, together with a statement in outline of its leading objects. This statement not only did not communicate the full instructions under which that plenipotentiary was to carry into effect the Clayton-Bulwer treaty according to the American construction of it, but left it to be inferred that the new negotiations were to be based not upon the treaty of 1850, but upon the Dallas-Clarendon treaty of 1856.

The special commission, according to your lordship's communication, was "charged with the duty of negotiating arrangements conformable in general character to those contemplated by the treaty

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signed by the secretary of state for foreign affairs and the United States minister in 1856, but subject to certain modifications which may be consistent with the just claims of the Central American Republics, with the general welfare of trade, with the vested interests of British subjects, and which will be, at the same time, agreeable to the wishes of the United States."

This substitution of a basis of the new negotiations of a treaty which had never represented the views and policy of this Government, which had undergone important alterations in the Senate, which even after these alterations had been adopted with hesitation both by the President and the Senate as a "compromise" for the sake of peace, and which, at least, had been rejected by Great Britain because it was unwilling to sanction the Senate's amendments to it—this substitution of the Dallas-Clarendon treaty with some undefined modifications instead of the plain and precise basis which was implied in the American construction of the convention of 1850 could not fail to arrest the attention of the President and increase his anxiety to receive a more definite account of Sir William Ouseley's instructions. This anxiety was not diminished by the dispatch of Lord Clarendon of November 20, which was transmitted with your lordship's communication of December 5, for in that dispatch not only was the Dallas-Clarendon treaty referred to as a basis of the new negotiations, without any explanations whatever of the precise modifications which the commissioner was authorized to make in its provisions, but it was even urged as a matter of "concern and disappointment" that the Government of the United States, "so far from desiring to facilitate the adjustment of these questions, are inclined to require admissions on the part of this country (Great Britain) which, if made, would render all negotiations superfluous." Since the only condition which had been made by this Government was that the treaty should be executed according to the American construction of it, and this condition had been, moreover, a part of the original proposition made by your lordship to the President, it is difficult to understand how the expression of it in your report of your interviews with the President could have occasioned Lord Clarendon either "concern" or "disappointment." Equally surprising was the declaration of his lordship in the same dispatch that "it can not be expected that the British Government, which entertains no doubt as to the true intent and meaning of the Clayton-Bulwer treaty, should abandon their opinion in order to adopt the adverse interpretation put upon that treaty by the Government of the United States," because it was according to the general tenor of this very interpretation that your lordship informed the President, on the 19th of October, you believed it was the intention of Her Majesty's Government to carry the Clayton-Bulwer treaty into execution, and it was only on this basis that the President had given the assurances to your lordship to which I have already adverted. In view of the tone and language of this dispatch of Lord Clarendon the President might have been fully justified in withdrawing these assurances of October last, because the condition upon which they were given appeared now to be unsatisfactory to Her Majesty's Government. But since he was assured that Her Majesty's Government desired to persevere in the mission of Sir William Ouseley, and since it was only reasonable to believe that this mission had been undertaken in a friendly spirit, he determined to do nothing which might either frustrate or delay it, unless he should feel

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compelled to do so after receiving that full information on the subject which he still had reason to expect. Accordingly, in his message to Congress, after describing the position which the Central American question then occupied, he added: "Whilst entertaining these sentiments I shall nevertheless not refuse to contribute to any reasonable adjustment of the Central American questions which is not practically inconsistent with the American interpretation of the treaty. Overtures for this purpose have been recently made by the British Government in a friendly spirit, which I cordially reciprocate, but whether this renewed effort will result in success I am not yet prepared to express an opinion. A brief period will determine."

The view here taken of Sir William Ouseley's mission is precisely that which was taken of it in your lordship's interviews with the President on the 19th and 24th of October, and precisely that which this Government has ever since steadily maintained. Soon after the meeting of Congress it was understood that some delay was thought necessary in the prosecution of the mission, in consequence of the expedition of Walker, and the treaty which had been negotiated between the United States and Central America, concerning both of which events your lordship seemed desirous to ascertain the opinions of your Government. In repeated conversations with your lordship on this subject I was led to infer that when these opinions were known I should receive a further communication in reference to the instructions and purposes of Her Majesty's special commissioner, and in these interviews I was careful to express my sincere hope that these instructions and purposes would be found of such a character as to meet the cordial concurrence of the President.

No such communication, however, has been received, and this Government has now no more definite information concerning Sir William Ouseley's mission than it had when the President referred to it in his message to Congress on the 8th of December.

I am instructed, therefore, to request from your lordship a full and definite statement of the arrangements by which it is proposed that this mission shall carry into effect the Clayton-Bulwer treaty, according to the American interpretation of it. This request, as your lordship must perceive, has become necessary in reference to Sir William Ouseley's mission in which the President has been placed by the proceedings of Her Majesty's Government.

The President has expressed his entire concurrence in the proposal for an adjustment of the Central American question which was made to him by your lordship last October, and he does not wish that any delay or defeat of that adjustment shall be justly chargeable to this Government. Since, however, he is asked to cooperate in the arrangement by which it is expected to accomplish it, it is essential that he should know with reasonable accuracy what those arrangements are. This information becomes the more important in consequence of the idea which seems to prevail in Lord Clarendon's dispatches of November 20, that the American interpretation of the Clayton-Bulwer treaty of 1850 was to be found in the provisions of the Dallas-Clarendon treaty of 1856.

I need not repeat to your lordship that this idea is clearly erroneous, because your lordship is aware that the treaty of 1856 was an attempt to reconcile the conflicting views of the two Governments, and did not pretend to adopt, in their full extent, the claims of either. Without,

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however, any further reference to this rejected treaty, I am instructed by the President to express his sincere hope that the more perfect information which he hopes to have concerning the mission of Sir William Ouseley may justify him in anticipating from it a substantial execution of the Clayton-Bulwer treaty according to the general tenor of the American interpretation of it. In that event he will be happy to give it his cordial cooperation, and to direct the ministers of the United States in Central America to render any assistance in their power toward promoting its success.

The prosecution of this mode of adjustment, I need hardly remind your lordship, must necessarily exclude the adoption of any other alternative. I was surprised therefore, on the 27th of October, only eight days after the interview with the President, in which your lordship had announced the mission of Sir William Ouseley, and the President had expressed his concurrence in it, to hear your lordship, in conversation at this Department, propose a different alternative and renew the offer of arbitration which had been previously declined by this Government and which I did not hesitate to decline again.

On the 30th of November, the very day when the first official announcement was made of Sir William Ouseley's mission, I was still more surprised that this offer of arbitration was formally renewed, but I regarded it as sufficiently answered by the express concurrence of the President in the mode of adjustment contemplated by that mission, even if it had not been twice rejected before. In conversation with your lordship since this last offer, I have freely expressed to you my views concerning it, but in order to avoid any misapprehension on the subject I am instructed to inform you that the reasons which caused the rejection of the offer of arbitration when it was first proposed by Great Britain still exist, and that for these reasons it is again declined.

Should Sir William Ouseley's mission be successful in giving effect to the Clayton-Bulwer treaty according to the American construction of it, it will be unnecessary, of course, for either the United States or Great Britain to consider the question of its abrogation. Had this abrogation been promptly made as soon as it was discovered that the treaty was understood by the parties to it in senses directly opposite, it is quite possible that the Central American questions might have been adjusted ere this to the satisfaction of both Governments; and if the abrogation could be accomplished now, by substituting a new adjustment of these questions for that which has led to so much discussion in the convention of 1850, this might be a fortunate termination of the whole controversy. But after eight years of fruitless negotiation, to abandon the treaty, without any arrangement whatever of the difficulties out of which it grew, would be almost to abandon at the same time all hope of adjusting these difficulties in a peaceful manner.

In a recent conversation with your lordship on this subject, I understood you to say that while Great Britain might possibly consent to dissolve the treaty, it would, in your belief, expect the dissolution to be accompanied by some stipulations which Her Majesty's Government desire to have, in respect to the transit routes across the isthmus, but that it had no intention, in that event, of relinquishing any of the possessions which it now has in Central America. With this understanding of your suggestion, I replied that in my judgment the President would never consent, while Great Britain continued to main-

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tain her Central American possessions, to make new concessions to her interests in that quarter, but would prefer rather that the dissolution of the treaty should be naked and unconditional. From your lordship's "confidential" note to Lord Malmesbury of the 22d ultimo, I now learn that in advising certain new stipulations to accompany the repeal of the treaty of 1850, should such a repeal be determined on, you had "never designed to represent those suggestions as official or unalterable, or to intimate that Her Majesty's Government would not listen to any amicable proposal for the simple revocation of the treaty alluded to."

I understand your lordship, however, to remain firmly of opinion that if the treaty should be dissolved, Her Majesty's Government would relinquish none of its pretensions in Central America, and that the Bay Islands especially "would remain attached to the British Crown." Since it is well known that the views of this Government are wholly inconsistent with these pretensions, and that it can never willingly therefore acquiesce in their maintenance by Great Britain, your lordship will readily perceive what serious consequences might follow a dissolution of the treaty if no provision should be made at the same time for adjusting the questions which lead to it.

If, therefore, the President does not hasten to consider now the alternative of repealing the treaty of 1850, it is because he does not wish prematurely to anticipate the failure of Sir William Ouseley's mission, and is disposed to give a new proof to Her Majesty's Government of his sincere desire to preserve the amicable relations which now happily subsist between the two countries.

I have, &c., &c.,

LEWIS CASS.

[Inclosure No. 9—3.]

Mr. Cass to Lord Napier.

DEPARTMENT OF STATE,
Washington, November 8, 1858.

MY LORD: I have had the honor to receive the copy which your lordship did me the favor to send me of Lord Malmesbury's dispatch to your lordship of August 18, in reference to Sir William Ouseley's mission, and have submitted it to the consideration of the President. From the statement of Lord Malmesbury that the British Government has no remaining alternative but that of leaving the Cabinet of Washington to originate any further overtures for an adjustment of these controversies, it is quite obvious that the position of the President on this subject is not correctly understood by Her Majesty's Government. Since the announcement by your lordship in October, 1857, of Sir William Ouseley's special mission, the President has awaited not so much any new proposition for the adjustment of the Central American question as the statement in detail which he had been led to expect of the method by which Sir William Ouseley was to carry into effect the previous proposition of the British Government. To make this plain, your lordship will pardon me for making a brief reference to what has occurred between the two governments in respect to Central America since the ratification of the Clayton-Bulwer treaty of 1850.

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While the declared object of that convention had reference to the construction of a ship-canal, by the way of San Juan and the lakes of Nicaragua and Managua, from the Atlantic to the Pacific oceans, yet it avowed none the less plainly a general principle in reference to all practicable communications across the Isthmus, and laid down a distinct policy by which the practical operation of this principle was likely to be kept free from all embarrassment. The principle was that the interoceanic routes should remain under the sovereignty of the states through which they ran, and be neutral and free to all nations alike. The policy was, that in order to prevent any government outside of those states from obtaining undue control or influence over these interoceanic transits, no such nation should "erect or maintain any fortifications commanding the same, or in vicinity thereof, or should occupy or fortify or colonize or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America."

So far as the United States and Great Britain were concerned, these stipulations were expressed in unmistakable terms, and in reference to other nations it was declared that the contracting parties in this convention engage to invite every state with which both or either have friendly intercourse to enter into stipulations with them similar to those which they have entered into with each other. At that time the United States had no possessions whatever in Central America, and exercised no dominion there. In respect to this Government, therefore, the provisions of the first article of the treaty could operate only as a restriction for the future, but Great Britain was in the actual exercise of dominion over nearly the whole eastern coast of that country, and in relation to her this article had a present as well as a prospective operation. She was to abandon the occupancy which she already had in Central America, and was neither to make acquisitions or erect fortifications or exercise dominion there in the future. In other words, she was to place herself in the same position, with respect to possessions and dominion in Central America, which was to be occupied by the United States, and which both the contracting parties to the treaty engaged that they would endeavor to induce other nations to occupy. This was the treaty as it was understood and assented to by the United States, and this is the treaty as it is still understood by this Government. Instead, however, of giving effect to it in this sense, the British Government proceeded, in 1851, only a few months after the signature to the treaty, to establish a new British colony in Central America under the name of the "Bay Islands;" and when this Government expressed its great surprise at this proceeding and at the failure of Great Britain to comply with the terms of the convention, Her Majesty's Government replied that the islands already belonged to Great Britain at the date of the treaty, and that the convention, in their view of it, interfered with none of their existing possessions in Central America, but was wholly prospective in its character, and only prevented them from making new acquisitions. It is unnecessary to do more than simply refer to the earnest and able discussions which followed this avowal, and which show more and more plainly the opposite constructions which were placed upon the treaty by the two governments.

In 1854 it was sought to reconcile these constructions and to terminate the Central American question by the convention which was

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signed at London by the American minister and Lord Clarendon, usually designated the Dallas-Clarendon treaty. The terms of this treaty are doubtless familiar to your lordship.

It provides—

1. For the withdrawal of the British protectorate over the Mosquito Indians and for an arrangement in their behalf upon principles which were quite acceptable to the United States.

2. It regulated the boundaries of the Belize settlements, within which Great Britain claimed to exercise certain possessory rights, upon terms which, although not wholly acceptable to this Government, were yet in a spirit of generous concession ratified by the United States Senate.

3. It provided for a cession of the Bay Islands to Honduras (in the opinion of this Government their rightful proprietor), but this concession was made dependent upon an unratified treaty between Great Britain and Honduras, whose terms were not officially known to this Government, but which, so far as they had unofficially appeared, were not of a satisfactory character.

The Senate, therefore, in ratifying the Dallas-Clarendon treaty, felt obliged to amend it by striking out all that part of it which contemplated the concurrence of this Government in the treaty with Honduras, and simply providing for a recognition by the two governments of the sovereign right of Honduras to the islands in question. Great Britain found itself unable to concur in this amendment, and the Dallas-Clarendon treaty, therefore, fell to the ground. It was clear, however, that the objections of the Senate to the Honduras treaty were not deemed unreasonable by Her Majesty's Government, because, in your lordship's interview with the President on the 22d of October, 1857, your lordship "allowed that the articles establishing the administrative independence of the islands might have been larger than was necessary." "I had observed," you added, "the same impression in the correspondence of Mr. Wyke, Her Majesty's chargé d'affaires at Guatemala, who seemed to admit that a greater participation in the internal government might be granted to the authorities of Honduras," and you made "no doubt that Her Majesty's Government would entertain any reasonable suggestions which might be offered to them in that sense."

And again, in your lordship's note to this Department of November 30, 1857, you recognize the same probability "that the intervention of the Honduras Government in the administration of the islands may have been more limited than was necessary or even advisable."

Such was doubtless the opinion of Honduras, for as long ago as May 10, 1857, I was informed by your lordship that the treaty remained unratified "owing to some objections on the part of the Government of Honduras," and that "Her Majesty's Government does not expect that the treaty in its present shape will be definitely sanctioned by that Republic."

In view of the objectionable provisions of this convention with Honduras, and of its failure to be sanctioned by that Republic, your lordship, by the authority of Lord Clarendon, informed me on the 6th of May, 1857, that Her Majesty's Government was prepared to sanction a new treaty, in respect to the Central American questions, which should in all respects conform to the Dallas-Clarendon treaty, as ratified by the Senate, except that to the simple recognition in the Senate's

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substitute for the second separate article of the sovereignty of Honduras over the Bay Islands there was to be added the following passage: "Whenever and so soon as the Republic of Honduras shall have concluded and ratified a treaty with Great Britain by which Great Britain shall have ceded and the Republic of Honduras shall have accepted the said islands subject to the provisions and conditions contained in said treaty." While this condition contemplated a new treaty with Honduras which might possibly avoid the objectionable provisions of the old one, yet it was quite impossible for the United States to become a party, either directly or indirectly, to a convention which was not in existence, or whose terms and conditions it could neither know nor control. For this reason I informed your lordship in my communication of May 29, that your lordship's proposition was declined by this Government.

The attempts to adjust the Central American questions by means of a supplementary treaty having thus failed of success, and the subject not being of a character, in the opinion of the United States, to admit of their reference to arbitration, the two Governments were thrown back upon their respective rights under the Clayton-Bulwer treaty. While each Government, however, had continued to insist upon its own construction of this treaty, there was reason to believe that the embarrassments growing out of their conflicting views of its provisions might be practically relieved by direct negotiation between her Majesty's Government and the States of Central America.

In this way it seemed possible that, without any injustice to those States, the treaty might be rendered acceptable to both countries as well as operative for the disinterested and useful purposes which it had been designed to serve. The President, therefore, was glad to learn from your lordship, on the 19th of October, 1857, that Her Majesty's Government had "resolved to dispatch a representative of authority and experience to Central America, to make a definite settlement of all the matters with regard to which the United States and England were still at variance, and who would be instructed," as your lordship believed, "to carry the Clayton-Bulwer treaty into execution according to the general tenor of the interpretation put upon it by the United States, but to do so by separate negotiation with the Central American Republics in lieu of a direct engagement with the Federal Government." This announcement could not fail to be received with satisfaction by the President, because it contemplated the substantial accomplishment of the very purposes in respect to the treaty which the United States had always had in view, and so long as these were accomplished he assured your lordship that "to him it was indifferent whether the concession contemplated by Her Majesty's Government were consigned to a direct engagement between England and the United States or to treaties between the former and the Central American Republics; the latter method might, in some respects, he added, be even more agreeable to him, and he thought it would be more convenient to Her Majesty's Government, who might, with greater facility, accede to the claims of the weaker party."

It is unnecessary to refer at length to what was said in this conversation, or to a second one on the same subject which your lordship had with the President on the evening of October 23; but there can be no doubt that in both interviews the expected mission of Sir William Ouseley (who it was understood had been selected as the plenipoten-

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tiary referred to), in connection with what your lordship indicated as his probable instructions, was favorably regarded by the President. So much was this the case, that he gave your lordship his full assurance that should your lordship's announcement be confirmed by any official information such as he could use, he would change that part of his message which related to Great Britain, would encourage no attempt in Congress to annul the treaty while the mission was in progress, and nothing could give him greater pleasure, he said, "than to add the expression of his sincere and ardent wish for the maintenance of friendly relations between the two countries."

At the close of the second interview he even went so far as to remark, in reference to the extended boundary claimed by Great Britain for the Belize (to which he had ever objected), that he could take no absolute engagement in this matter, but he would say this much, "that if the Bay Islands were fairly and handsomely evacuated, such a measure would have a great effect with him and with the American people in regard to the settlement of the other points at issue."

Sir William Ouseley arrived in Washington about the middle of November, and on the 30th of November I received from your lordship an official statement in outline of the purposes of his mission.

On the 5th December your lordship inclosed to me a copy of Lord Clarendon's dispatch of November 20, in which your lordship's previous statement was substantially confirmed, and in which it was further stated that "Sir William Ouseley, during his visit to Washington, will, in pursuance of his instructions, have explained with the utmost frankness to the Government of the United States the nature of the instructions with which he is furnished, and your lordship, as the duly accredited organ of Her Majesty's Government, will have given similar explanations."

The objects of Sir William Ouseley's mission, as thus made known to the United States, were:

1. To provide for the transfer by Great Britain of the Bay Islands to the Government of Honduras; and in this transfer it was especially declared that the stipulations in the British treaty with Honduras were not to be rigidly adhered to. Sir William Ouseley, on the contrary, while requiring provisions to secure the vested rights of British subjects in the Bay Islands, was to be left at liberty to contract engagements with Honduras which should embody not only an unmistakable recognition of its sovereignty over these islands, but should allow of a more direct government and a more efficient protection over them by that republic than had been contained in the convention of 1856.

2. The second object of Sir William Ouseley's mission was the settlement of the question of the Mosquito protectorate with Nicaragua and Honduras. Whilst he was to provide for the compensation, the government, and the protection of the Mosquito Indians under the sovereignty of Nicaragua, this was to be done upon terms not less favorable than those which had received the approbation of the Senate in the Dallas-Clarendon treaty. In no degree was the Indian reserve to trespass on the territory applicable to transit purposes.

3. The regulation of the frontier of British Honduras was to be effected by negotiation with the Government of Guatemala. Her Majesty's Government trusted to obtain from that republic a recognition of limits "which, if we may judge from previous communications on the subject, may be accepted in a spirit of conciliation, if not with absolute approval, by the President."

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Such were the overtures communicated by your lordship's note to this Department, of November 30, and which were again referred to in Lord Clarendon's note to your lordship, of November 20, of which you inclosed to me a copy in your lordship's note of December 5. Inasmuch as the announcement of Sir William Ouseley's mission, with the explanation by your lordship of its general purposes, had been received with much satisfaction by the President, there were some expressions in this note of Lord Clarendon's which it was not easy to understand, but which, nevertheless, did not materially change the general character of the overtures. It was still stated in that dispatch "that the objections entertained in the United States to the constructions placed upon that treaty by the British Government are, as every impartial person must admit, in a fair way to be removed by the voluntary act of the latter; and while the objects of Sir William's mission continued to be mentioned in only general terms, it was yet added that during his visit to Washington he will, in pursuance of his instructions, have explained with the utmost frankness the nature of the instructions with which he is furnished, and your lordship, as the duly accredited organ of Her Majesty in the United States, will have given similar explanations."

The President did not hesitate, therefore, in his message to Congress, to refer to these overtures as having recently been made by the British Government in a friendly spirit, which he cordially reciprocated. He could do no more than this, whatever might be his hopes for the success of Sir William's mission, until he had received the further explanations concerning it which he had been led to expect, and which he was prepared to consider in the kindest and most respectful manner. The general remarks contained in the outline of November 30 must have been molded in some specific form, in order to enable this Government to arrive at a practical decision upon the questions presented to it. This I understood to be the view of your lordship and Sir William Ouseley, as well as that of the President and this Department. Indeed, it was wholly in conformity with this view that Sir William Ouseley was understood to have called at Washington on his way to Central America. Had he proceeded directly to his destination, and there, by separate treaties with the Central American Republics, given substantial effect to the Clayton-Bulwer convention, according to the general tenor of the American construction of that instrument, the Central American controversy would then have been fortunately terminated to the satisfaction of both Governments. But since this Government, in a spirit of comity, which the President fully appreciates, was asked to cooperate in accomplishing this result, it was surely not unreasonable that it should know specifically the arrangements which it was expected to sanction.

The general objects in view we were acquainted with and approved, but there was no draft of a treaty, no form of separate article, no definition of measures. The Bay Islands were to be surrendered, but under what restrictions? The Dallas-Clarendon treaty was to be modified, but what were the modifications? The rights of British subjects and the interests of British trade were to be protected in Ruatan, but to what extent and by what conditions? Honduras was to participate more largely in the government of the Bay Islands than she was allowed to do by the convention of 1856, but how far was she to be restrained and what was to be her power?

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These and other similar questions naturally arose upon the general overtures contained in your lordship's note of November 30, and seemed naturally enough to justify the hope which was entertained of some further explanation of those overtures. In all my conversations with your lordship on the subject of Sir William's mission, subsequent to the meeting of Congress, this expectation of some further and more definite communication concerning it was certainly taken for granted, and until time was given to receive such a communication, you did not press for any answer to your lordship's note of November 20. In the beginning your lordship seemed to think that some embarrassment or delay in prosecuting the mission might be occasioned by the expedition to Nicaragua which had been undertaken by General Walker, and by the Cass-Yrisarri treaty which had been negotiated with that Republic by the United States; but the treaty was not disapproved by Her Majesty's Government and the expedition of Walker was promptly repressed, so that no embarrassment from these sources would be further apprehended. As the delay still continued, it was suggested by your lordship, and fully appreciated by me, that Her Majesty's Government was necessarily occupied with the affairs of Her Majesty's possessions in India, which then claimed its immediate attention to the exclusion naturally of business which was less pressing, and hence I awaited the expected instructions without any anxiety whatever. All this is precisely what your lordship very frankly describes in your lordship's communication to this Department of April 12, 1858. "I addressed my Government," your lordship says, "with a view to obtaining further explanations and instructions, and I informed you that it was not my desire to press for an official reply to the overtures of the Earl of Clarendon pending an answer from London."

The explanations, however, anticipated by your lordship and by myself were not received, and about three months after the arrival of Sir William at Washington you expressed to me your regret that you had held out expectations which proved unfounded and which had prompted delay, and then for the first time requested an answer to the proposals of Her Majesty's Government, and "especially to that part of them relating to the arbitration." It was even then suggested that the answer was desired because it was thought to be appropriate as a matter of form and not because the explanations which had been waited for were deemed wholly unnecessary. "I overlooked something due to forms," is your lordship's language in the note of April 12, "in my anxiety to promote a clearer understanding, and I eventually learned in an official shape that Her Majesty's Government, following their better judgment, desired, before making any further communication, a reply to their overtures, and especially to that part of them referring to arbitration. Should the new proffer of arbitration be declined, it was clearly not supposed in your note of February 15 that this result would have any tendency to interrupt Sir William's efforts; but in that event it was hoped, you informed me, that these efforts would result in a settlement agreeable to the United States, inasmuch as in essential points it would carry the treaty of 1850 into operation in a manner practically conformable to the American interpretation of that instrument.

On the 6th of April I replied to your lordship's note of February 15, with a very frank and full statement of the views of this Government

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upon all the points to which your lordship had referred. The renewed offer of arbitration mentioned in a dispatch of Lord Clarendon was explicitly declined for the same reasons which had occasioned its rejection before, but an earnest hope was expressed for the success of Sir William Ouseley's mission, and I was instructed formally to request from your lordship those further explanations concerning it which had been promised in Lord Clarendon's note of November 20, for which both your lordship and myself had waited for three months in vain, and which, up to this time, have never been furnished to the American Government. The disappointment which the President felt at some portions of the correspondence which had occurred, and especially at the failure of Her Majesty's Government to inform him more fully than it had done on the subject of the mission, was communicated to your lordship without the least reserve, but in the purposes of that mission, so far as he understood them, I was authorized to say that he fully concurred, and to add his sincere hope that they might be successfully accomplished.

"The President," I informed you, "has expressed his entire concurrence in the proposal for an adjustment of the Central American questions which was made to him by your lordship last October, and he does not wish that any delay or defeat of that adjustment shall be justly chargeable to this Government. Since, however, he is asked to cooperate in the arrangement by which it is expected to accomplish it, it is essential that he should know with reasonable accuracy what those arrangements are." It was in the hope of this adjustment, as well as with a view to the serious consequences which might flow from a naked repeal of the Clayton-Bulwer treaty, that I made the observations on that subject which are contained in my letter to your lordship of April 6. No demand for this abrogation, your lordship is well aware, had then been made by her Majesty's Government; but your lordship had several times suggested to me that such an alternative, if proposed by the United States, would be respectfully considered by Great Britain, and in your lordship's belief might in some form or other be finally adopted. You informed me, however, at the same time, that in that event Great Britain would not be inclined to surrender its possessions in Central America, and would certainly continue to occupy the Bay Islands. In reply to this announcement, I informed your lordship that since it is well known that the views of this Government are wholly inconsistent with these pretensions, and that it can never willingly acquiesce in their maintenance by Great Britain, your lordship will readily perceive what serious consequences might follow a dissolution of the treaty, if no provision should be made at the same time for adjusting the questions which led to it.

"If, therefore," I added, "the President does not hasten to consider now the alternative of repealing the treaty of 1850, it is because he does not wish to anticipate the failure of Sir William Ouseley's mission, and is disposed to give a new proof to Her Majesty's Government of his sincere desire to preserve the amicable relations which now happily subsist between the two countries."

Having thus complied with your lordship's request, and given that formal reply to the overtures embraced in Sir William Ouseley's mission which was desired by Her Majesty's Government, I confidently expected to receive within a reasonable time these additional instructions which appeared to have been delayed for this delay. Such,

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doubtless, was the hope also of your lordship. "The discussion has been deferred," you informed me in your note of April 12, "but the interests at stake have probably not suffered. The results of the negotiation between Nicaragua and the United States are not yet disclosed, and it is probable that Sir William Ouseley may proceed to his destination with more advantage when the nature of those engagements is fully defined." "If the American Cabinet," you also said, "as may be inferred from your expressions, be well disposed towards Sir William Ouseley's mission, and will meet Her Majesty's Government in a liberal spirit on matters of secondary moment, that mission may still conduct us to a happy termination." In further informing me that my communication would be transmitted to Her Majesty's Government, you added, "It remains with Her Majesty's Government to determine whether they can afford the more perfect information desired."

This was the state of the negotiation in April, 1858. The purposes of Sir William Ouseley's mission had been announced to the American Government and approved; reference had been made by Lord Clarendon to your lordship and Sir William Ouseley for further explanation; these explanations had been asked for from your lordship in repeated interviews, but your lordship had not received the necessary instructions to make them until a reply had been received to the general overtures embraced in your previous notes, and especially to that part of them relating to arbitration; this reply had been given, still approving the mission and rejecting the arbitration; and it had been sent to London for the consideration of Her Majesty's Government.

Under these circumstances, I need not describe to your lordship the surprise with which I received the copy of Lord Malmesbury's dispatch to your lordship, dated at Potsdam, August 18, which you were good enough to inclose to me. In this dispatch, instead of affording any more exact definition of the objects of Sir William Ouseley's mission, your lordship is directed to inform me that Her Majesty's Government "have, in fact, nothing to add to the explanations given by Sir William and your lordship upon the subject." As no explanations whatever had been received from either Sir William or yourself since the communication of November 30, it is obvious that his lordship must labor under some misapprehension on this subject; and equally clear is it that when his lordship represents me as having declared in my note of the 6th of April that the Government of the United States could not agree to the abrogation of the Clayton-Bulwer treaty, that he has failed to appreciate fully the views of the United States in reference to that abrogation. The declaration in my note of April 6 was certainly not against any abrogation of the treaty, but against considering the expediency of abrogating it at that particular time. and until hopes were at an end for a successful termination of Sir William Ouseley's mission. This waiver of a discussion on the subject of abrogation, in deference to the purposes of that mission, indicated very clearly, it seems to me, how much was expected by this Government from Sir William Ouseley's mission. Yet even these efforts Lord Malmesbury seems to regard as having been rejected by the United States, and Her Majesty's Government, he concludes, have no alternative but that of leaving to the Cabinet of Washington to originate any further overtures for an adjustment of these controversies.

Surely, my lord, there must be some grave misapprehension in all

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this of the views entertained and expressed by this Government upon the proposal embraced in your lordship's note of November 30, or else this Government has labored under an equally serious error as to what was intended by Sir William Ouseley's mission. It is under this impression, and in order to prevent two great nations from failing in their attempts to adjust an important controversy from a mere question of form, or a mere misunderstanding of each other's views, that I have entered into this extended narrative. It is of no small consequence, either to the United States or Great Britain, that these Central American controversies between the two countries should be forever closed.

On some points of them, and I have been led to hope on the general policy which ought to apply to the whole Isthmian region, they have reached a common ground of agreement.

The neutrality of the interoceanic routes and their freedom from the superior and controlling influence of any one Government, the principles upon which the Mosquito Protectorate may be arranged, alike with justice to the sovereignty of Nicaragua and the Indian tribes, the surrender of the Bay Islands under certain stipulations for the benefit of trade and the protection of their British occupants, and the definition of the boundaries of the British Belize—about all these points there is no apparent disagreement, except as to the conditions which shall be annexed to the Bay Islands' surrender, and as to the limits which shall be fixed to the settlements of the Belize. Is it possible that, if approached in a spirit of conciliation and good feeling, these two points of difference are not susceptible of a friendly adjustment? To believe this would be to underestimate the importance of the adjustment, and the intelligent appreciation of this importance which must be entertained by both nations.

What the United States want in Central America, next to the happiness of its people, is the security and neutrality of the interoceanic routes which lead through it. This is equally the desire of Great Britain, of France, and of the whole commercial world. If the principles and policy of the Clayton-Bulwer treaty are carried into effect this object is accomplished. When, therefore, Lord Malmesbury invites new overtures from this Government upon the idea that it has rejected the proposal embraced in Sir William Ouseley's mission for an adjustment of the Central American questions by separate treaties with Honduras, Nicaragua, and Guatemala, upon terms substantially according with the general tenor of the American interpretation of the treaty, I have to reply that this very adjustment is all that the President ever desired, and that instead of having rejected that proposal he had expressed his cordial acceptance of it so far as he understood it, and had anticipated from it the most gratifying consequences.

Nothing now remains for me but to inquire of your lordship whether the overtures contained in your lordship's note of November 30 are to be considered as withdrawn by Her Majesty's Government, or whether the good results expected in the beginning from Sir William Ouseley's mission may not yet be happily accomplished.

I have, &c.,

LEWIS CASS.

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[Inclosure No. 9—4.]

Mr. Cass to Mr. Dimitry.

No. 3.] DEPARTMENT OF STATE,
Washington, September 22, 1859.

SIR: In the memorandum accompanying the instructions you received, dated the 31st ultimo, a brief review was given of our relations with Great Britain, arising out of the Clayton-Bulwer treaty, and the general course indicated which it was thought expedient you should pursue. At that time we had not been furnished with a copy of the Ouseley-Zeledon treaty, and did not therefore know precisely what terms had been offered by the British plenipotentiary to Nicaragua, though we knew that these were not entirely satisfactory to that Republic, and that much delay had been the consequence, which was accompanied with danger of a failure of the negotiations. Since then we have received from Mr. Runnells, our consul at San Juan del Sur, a copy of the proposed treaty, which was communicated to him by Mr. Zeledon, with the expression of a wish that the Government of the United States would offer any suggestions to that of Nicaragua in relation to the adjustment of the Mosquito question, intimating at the same time that no definitive action should be taken till our views were received. The specific objections to the British project were not, however, made known to us.

Since your departure the British Government has again given us such assurances as to their desire to terminate these Nicaraguan difficulties by a just and satisfactory arrangement with that Republic, and in conformity with the principles which had been approved by this Government, that I indulge the confident expectation that the present effort will be successful and future difficulties be prevented.

You will express to the minister of foreign affairs our gratification at the confidence exhibited toward the United States, and the assurance that our best efforts shall be devoted to a termination of the existing difficulties between Great Britain and Nicaragua upon terms honorable and just to both parties.

You are at liberty also to submit to Mr. Zeledon a copy of such portions of this letter as you may consider expedient, that the views of the United States may be fully made known to the Nicaraguan Government, and you will embrace all favorable opportunity in conversation of impressing upon the minister of foreign affairs the importance of dealing with this whole subject in a spirit of justice and moderation, and of meeting with corresponding feelings the friendly sentiments avowed by the British Government. It is not less desirable that you should cultivate the best relations with the British minister, and should also explain candidly to him the objects of your Government and the conciliatory course you are pursuing.

When it was found difficult for the Government of the United States and that of Great Britain to conclude a satisfactory treaty for the arrangement of the various subjects growing out of the Clayton-Bulwer treaty, the British Government proposed to make separate treaties with the several States of Central America interested in the adjustment of these matters. To this proposition this Government assented, with the understanding that the terms should, in their general purport, be in conformity with the principles which this Government had approved.

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and which had been fully discussed between us and the Government of Great Britain.

I have carefully examined the proposed treaty offered by the British minister to Nicaragua, a copy of which accompanies this dispatch, and have compared it with that part of the amended Dallas-Clarendon treaty which relates to Nicaraguan affairs, and I find that, with one or two exceptions, they are substantially the same. The Dallas-Clarendon treaty in some of its Nicaraguan provisions was modified by the Senate, and in this modified form was submitted for the approbation of the British Government. That approbation was withheld, not on account of the changes made by the Senate in this part of the treaty, but on account of provisions contained in the same instrument, which had relation to the Bay Islands. You will find herewith a copy of the Dallas-Clarendon treaty, and you will find in parallel columns the same with the changes proposed by the Senate.

The British Government assured us that none of these changes were so unacceptable to it as to lead it to refuse its notification, and in May, 1857, Lord Napier presented for joint action the project of a treaty containing precisely the arrangements and stipulations as approved by the Senate. We have a right, therefore, to expect that this modified treaty should now be offered to the Nicaraguan Government instead of the treaty in its original form, as appears to have been proposed by Sir William Ouseley. There is no reason to suppose that the Government of Her Britannic Majesty, having signified their acceptance of the Senate modifications to the Dallas-Clarendon treaty, in all that relates to Nicaragua and the Mosquito question, will now interpose any objection to the conclusion of a similar convention between their minister in Central America and the Nicaraguan Government. You will communicate these views unreservedly to the Nicaraguan Government, and should the offer made to it be of the character just indicated, as this Government can not doubt it will be, you will, on the part of the United States, advise that it be promptly accepted. You will, also, make known your course to the British minister in Nicaragua.

Im am, &c.,

LEWIS CASS.

Memorandum for Mr. Dimitry, to accompany general instructions of August 31, 1859.

You are aware that difficulties growing out of the Clayton-Bulwer treaty have arisen between this country and Great Britain.

These concern Central America, and are owing, as the United States contend, to the palpable disregard by Great Britain of the words of that treaty, and the substitution of a construction entirely inconsistent with them, and which would give to Great Britain advantages in that quarter to which this country would not accede.

After much delay and prolonged discussion the British Government proposed to adopt substantially the construction we contended for, and to carry out the treaty in that spirit. To this the United States assented, and a conventional arrangement was negotiated for that purpose. The points principally at issue were—

1. The Mosquito protectorate.
2. The establishment of the southwestern boundary of the Belize settlement.
3. The condition of Ruatan and the other Bay Islands.

These questions were satisfactorily settled in a convention which received ratification by the proper authority of both Governments, but the measure ultimately failed in consequence of their disagreement upon another question.

After this the British Government proposed to form treaties with the Central American States interested in these points, and to adjust the various matters with them upon the basis which had been approved by the United States, and which would leave to

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Great Britain no other possessions in Central America but the Belize settlement. To this proposition also the United States gave their assent, and since that time we have been earnestly looking for the adjustment of these complicated difficulties. It is known that the Belize boundary has been settled by a convention between Great Britain and Guatemala, which carries it to the Sarstoon River, an important extension of that settlement, to which the United States were led to agree in the convention with Great Britain, which failed, as I have stated, because that arrangement of boundary was also accompanied by the arrangement of the other subjects in dispute. Without such a settlement of the whole matter this country would not have assented to this boundary adjustment. In the progress, however, of the controversy this extension has been secured by Great Britain, while the other stipulations requiring from her an abandonment of territory have been left unadjusted.

I am satisfied that this course has been the result of accident, and that the British Government is striving to fulfill its engagements in good faith. But you understand the dissatisfaction which the failure to arrange these subjects has occasioned in this country, and will therefore appreciate the anxiety of the Government that prompt action should immediately take place and this whole difference be brought to a satisfactory conclusion. I have entered into these details solely with a view to insure your zealous and efficient cooperation, not indeed by official interference, but by fair representations, in conversation, to the British minister in Nicaragua and the Government of that country, and by efforts to remove such difficulties as may arise, and especially by communicating to them the strong desire of the United States for a prompt arrangement of the controversy.

During some months a British minister has been in Nicaragua with instructions from his Government to enter into a convention for the adjustment of these conflicting views, and it is understood that the basis of the proposed settlement is acceptable, both to the Government of Great Britain and to that of Nicaragua, and in conformity with the expectations of the United States. It proposes that a reasonable extent of country be reserved for the use of the Mosquito Indians, to be held and occupied by them as Indian reservations are held and occupied in the United States and in Canada, under the sovereignty of the Republic of Nicaragua, and that any rights they may have to other portions of the territory be ceded to that Republic. It is also further proposed that a moderate annuity be secured as a consideration for this cession, and that this be effected by the payment of a small duty upon goods imported into San Juan and intended for consumption there. What difference of opinion in the details of this plan has prevented its being carried into effect is not known here, though it is known that some difference has occurred which has thus far delayed the arrangement.

By looking over the documents in the Department which relate to this subject you have ascertained the various points to which the United States have assented, and which it is expected will be assented to by the parties interested. On your arrival in Nicaragua you will endeavor to learn the true state of this matter, and report the result of your inquiry without delay; and at the same time you will strive to remove any difficulties which may stand in the way of a satisfactory negotiation. The British Government has been urged to give such orders to its minister as will insure his most zealous efforts to accomplish the object. We have been assured that this shall be done, and I am firmly persuaded that that Government is desirous that the proposed arrangement be carried immediately into effect. The arrangement will be followed by the withdrawal of the British power from every part of Nicaragua, and the recognition of the sovereignty of that State over every part of its territory.

An accident, which has been satisfactorily explained, has prevented the opening of negotiations between Great Britain and Honduras for the surrender of the Bay Islands to the latter country. We learn, however, that measures are in progress for the accomplishment of this object, and upon terms which the United States deem reasonable. It is to be hoped that a few months will be sufficient to complete the work of adjustment.

DEPARTMENT OF STATE, *August* —, 1859.

[Inclosure No. 9,—5.]

Mr. Cass to Mr. Clarke.

No. 6.] DEPARTMENT OF STATE,
Washington, October 1, 1859.

SIR: This Department has received information that Mr. Wyke, Her Britannic Majesty's chargé d'affaires in Honduras, has recently

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returned from London to his official duties, with instructions to negotiate a treaty with the Government of that country for the relinquishment to that republic of the Bay Islands. Under these circumstances the President thinks it very desirable that you, also, should be present in Honduras, in order to be able to render all suitable aid within your power to promote the contemplated session, as well as to be in a position to furnish early and reliable information to your Government with respect to the progress and results of the negotiation. You will embrace the earliest opportunity, therefore, to proceed to Comayagua and place yourself in communication with the Government there.

With your instructions No. 1, dated 29th March, 1858, you were furnished with copies of all the correspondence which had been printed in reference to Central American affairs, and from these, as well as from other sources which have been open to you, you have doubtless become familar with the whole controversy concerning the Bay Islands which has existed between the United States and Great Britain. In the opinion of this Government, these islands are a part of the territory of Honduras, and their occupation by Great Britain would have been wholly unjustifiable even if the Clayton-Bulwer treaty had never existed. By the terms of this treaty, however (of July 5, 1850), it is provided that "the Governments of the United States and Great Britain, neither the one nor the other shall ever occupy, or fortify, or colonize, or assume or exercise any dominion over Costa Rica, Nicaragua, the Mosquito shore, or any part of Central America." There being no doubt that the Bay Islands form a part of Central America, their occupation by Great Britain was distinctly prohibited by this provision of the Clayton-Bulwer treaty.

Yet they were seized upon by British officers, almost as soon as the treaty had been signed, and in less than two years afterward they were formally erected into a British colony. Of course the Government of the United States lost no time in protesting against this violation of the treaty, and the correspondence to which it led is already in your possession.

In 1856 the two Governments endeavored to adjust all the questions which had arisen under the convention, by a supplementary treaty, and such a treaty was signed at London by Lord Clarendon, on the part of Her Britannic Majesty, and Mr. Dallas, on the part of the United States, on the 17th October, 1856. That portion of it which referred to the Bay Islands was in the following words:

"That the islands, and their inhabitants, of Ruatan, Bonacca, Utilla, Barbarate, Helene, and Moxat, situate in the Bay of Honduras, and known as the Bay Islands, having been by a convention bearing date the twenty-seventh day of August, 1856, between Her Britannic Majesty and the Republic of Honduras, constituted and declared a free territory under the sovereignty of the said Republic of Honduras, the two contracting parties do hereby mutually engage to recognize and respect in all future time the independence and rights of the said free territory as a part of the Republic of Honduras."

The treaty here referred to, of August, 1856, had not been communicated to this Government and was not officially before the Senate when it had under consideration the Dallas-Clarendon treaty. It declined, therefore, to sanction a reference to it, which might be construed afterwards into an approval of its terms. The treaty, moreover, had been published in some of the public journals, and its pro-

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visions were not such as this Government could sanction. It erected the islands into a "free territory under the sovereignty of Honduras," but it then proceeded to deprive that Republic of rights without which its sovereignty over them could scarcely be said to exist. It separated them from the remainder of Honduras, and gave them a government of their own, with their own legislative, executive, and judicial officers, elected by themselves. It deprived the Government of Honduras of the taxing power in every form, and exempted the people of the Bay Islands from the performance of military duty, except for their own defense, and it prohibited the Republic from providing for their defense by the construction of any fortifications whatever. It provided, moreover, that slavery should at no time be permitted to exist in those islands. As slavery had never existd there and was not likely to be established there, this latter clause was wholly unnecessary, and when brought to the attention of the United States could not fail to be regarded as highly offensive.

But the restrictions were, all of them, in violation of the rights of Honduras. The islands were a part of her territory, and Great Britain having wrongfully seized them, was bound to make an unconditional restoration. Instead of doing this, she required Honduras to assent to a treaty by which they were erecting into an independent state within her own limits, and a state at all times liable to foreign influence and control. Entertaining this opinion, the Senate amended the Dallas-Clarendon convention by substituting for the clause already quoted the following:

"The two contracting parties do hereby mutually engage to recognize and respect the islands of Ruatan, Bonacca, Utilla, Barbarate, Helene, and Moxat, situate in the Bay of Honduras, and off the coast of the Republic of Honduras, as under the sovereignty and as part of the said Republic of Honduras."

Great Britain declined to assent to this amendment, and the Dallas-Clarendon treaty fell to the ground. The British treaty with Honduras also failed to be ratified by that Republic, and thus the Clayton-Bulwer convention, according to our construction of it, still remained unexecuted.

To avoid the difficulties which this state of things was likely to produce, the British Government proposed to send out a special minister to Central America, who might adjust the questions which had been under discussion in that quarter by separate treaties with Nicaragua, Guatemala, and Honduras. For this purpose Sir William Gore Ouseley was appointed, and came to Washington, on his way to his destination, in November, 1857.

While he was here, and even before his arrival, Lord Napier, the British minister in this country, conversed very freely with the Department concerning his instructions, and had also one or two conversations on the subject with the President.

In these conversations it was clearly understood that Her Majesty's Government had determined to execute the Clayton-Bulwer treaty "according to the general tenor of the interpretation placed upon it by the United States," and that the powers of Sir William Ouseley would be sufficient to enable him to accomplish this purpose. Reference was made, indeed, to the Dallas-Clarendon treaty, as amended by the Senate, but it was understood that the special minister would be at liberty to modify some of its provisions, in order to make it acceptable to the United States.

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On the 30th of November Lord Napier communicated officially to the Department a general statement of Sir William's instructions. That part of them which refers to Honduras is described as follows:

"1. The transfer of the Bay Islands to the Government of Honduras was recognized by the treaty of 1856, mentioned above, and the conditions of this cession were consigned in a treaty between Great Britain and Honduras, which has been communicated to the Government of the United States, but which has not been ratified by the contracting parties. By that treaty Her Majesty's Government intended to convey the islands in full sovereignty to the Republic of Honduras, to provide for them such a measure of municipal independence and self-government as might secure Her Majesty's subjects in the enjoyment and improvement of their possessions, and develop the resources of the islands, which may be destined to attain hereafter some commercial importance as an entrepôt in connection with the projected interoceanic railway.

"In looking to these reasonable and salutary ends it is, however, probable that the intervention of the Honduras Government in the administration of the islands may have been more limited than was necessary or even advisable. Her Majesty's Government in relinquishing the Bay Islands are far from desiring that they should remain defenseless or become independent. Sir William Ouseley is not bound down to the terms of the original treaty; he is at liberty to contract engagements with Honduras which shall embody not only an unmistakable recognition of its sovereignty over the islands, but shall allow of the more direct government, and more efficient protection of the latter by that Republic.

"The transfer of the islands will not be unconditional, but it will be unambiguous.

"The Government of Honduras will obtain not only a titular but a virtual and useful possession under provisions requisite for the security of those who have settled there with the assurance of protection from the British crown, and favorable to the expansion of that traffic which the transit route is expected to create.

"2. In framing stipulations for the compensation, the government, and the preservation of the Mosquito Indians under the sovereignty of Nicaragua, Sir William Ouseley will be guided by the provisions of the treaty of 1856, which, although it did not acquire the validity of an international engagement, may on this point be held to express the policy and opinions of the contracting parties. The limits of the territorial reserve may be subject to modifications, but the boundaries proposed to Nicaragua and Honduras will certainly not be less favorable than those indicated by the treaty alluded to; they will in no degree trespass on the territory applicable to transit purposes; and in the settlement of details Her Majesty's envoy will grant an indulgent consideration to the wishes and necessities of the Central American Governments where they are compatible with the safety and the welfare of those native tribes which have previously enjoyed the protection of the British crown.

"3. The regulation of the frontier of British Honduras will be effected by negotiation with the Government of Guatemala. Her Majesty's Government trusts to obtain from this Republic a recognition of limits which, if we may judge from previous communications on this subject, may be accepted in a spirit of conciliation, if not with absolute approval, by the President."

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Although this statement of the instructions was not accompanied by any draft of a treaty, and was not sufficiently specific to authorize an accurate judgment of their character, it was nevertheless hoped that they might be quite sufficient to answer their purpose. In reference to the views and expectations of the United States, there could be no doubt whatever, because, apart from the action of the Senate concerning the Dallas-Clarendon treaty, these views and expectations had been repeatedly expressed to the British minister, both orally and in writing. It was known that while it was quite immaterial to us whether Great Britain executed the Clayton-Bulwer treaty by a supplementary convention with us or by direct negotiation with the states of Central America, we yet expected that the treaty would be executed substantially according to our construction of it, and that, with reference to the Bay Islands, this construction required their unconditional surrender to Honduras.

Of course this Government could never sanction any such limitations upon the sovereignty of that Republic over its own territory as were contained in the Dallas-Clarendon convention, and the clause in respect to slavery was not only an unjust condition in regard to Honduras, but was also offensive, under the circumstances, to the United States. It was believed that the cession might well be made without any of these conditions, and that if any security should be really necessary to preserve the rights of British settlers upon the islands, it might safely be postponed to a new convention, when both parties should be in a situation to treat upon equal terms.

Whether Sir William Ouseley would have conformed to these views if he had made a treaty with Honduras can only be conjectured from what we know of his instructions. Unfortunately, he delayed a long time in Washington, and since his arrival in Central America, either from sickness or from some other cause, he has wholly failed to accomplish the object of his mission.

Mr. Wyke, who negotiated the previous treaty with Honduras for the cession of the Bay Islands, is now authorized to negotiate another with that Republic for the same object, and his authority is understood to be even more ample than that which was given to Sir William Ouseley. He is now, perhaps, in Guatemala, but will soon proceed to Honduras, and it is hoped that you will be able to cooperate with him in the leading purpose of his mission.

This narrative has fully explained to you the views of your Government upon the subject, and if, in conformity with these views, you can in any way assist Mr. Wyke in his negotiation, you will not fail to do so. To this end you should be in friendly relations with him, as well as with the Government of Honduras, and you may frankly state to both the general expectations which your Government entertains in respect to the cession of the Bay Islands. Believing that Honduras is the lawful owner of those islands, we can not advise her to purchase their surrender by consenting to any terms which are inconsistent with her dignity and rights. We believe that the surrender of them should be wholly unconditional, but there may be provisions in behalf of private rights, or even for the benefit of general commerce, of so reasonable a character that their insertion in the treaty ought not to occasion its defeat, even although they might more properly belong to another negotiation. With what is believed, however, to be the present disposition of the British Government, and with the liberal margin of

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discretion with which Mr. Wyke is supposed to be intrusted, it is hoped that the cession will not be encumbered with any stipulations to which either the United States or Honduras might reasonably take exception.

It is important that the treaty should be completed, if possible, so that it may be known in Washington at an early day after the meeting of Congress. You will, therefore, communicate a copy of it to the Department at the earliest practicable period, and your Government will then determine for itself whether its provisions can be regarded as a reasonable compliance in respect to Honduras with the Clayton-Bulwer treaty.

I will thank you, also, to inform the Department of your departure from Guatemala and of your arrival in Comayagua, and generally of the course and progress of the negotiation.

Your dispatches to No. 12, inclusive, have been received.

I am, &c.,

LEWIS CASS.

[Inclosure No. 9—6.]

Mr. Cass to Mr. Clarke.

No. 11.] DEPARTMENT OF STATE,
Washington, February 18, 1860.

SIR: Your dispatch of the 24th December has been received.

In connection with Mr. Wyke's note to you, a copy of which accompanied that dispatch, the Department has received the circumstances which have marked your recent official conduct in Central America. The Department regrets exceedingly that your understanding of the precise relations between this Government and that of Great Britain in regard to Central American questions was so inexact as to permit you to adopt a line of conduct different from that which the accord of those Governments would have indicated as the most consistent with their mutual views, and to lead you to protest against negotiations which were in harmony with the understanding of the subject entertained here and at London. The dispatch of 1st October last, which you have received, enabled you so to modify your course as to correct the misapprehension which your protest and correspondence were likely to excite on the part of the Governments of Guatemala and Honduras, although in communicating the views of your Government expressed in that dispatch it is to be regretted that the historical summary embodied in it for your information was transferred so literally to your note of 9th November to Mr. Wyke.

In making these observations, which I do equally in a spirit of frankness and kindness, I do not wish to be understood as censuring you for adopting a course which is not entirely approved.

On the contrary, I am pleased to be permitted to say that the President highly appreciates that zeal for the interests of your country which prompted you to adopt energetic measures when you thought those interests were in jeopardy. The patriotism of your conduct can not be questioned, nor the integrity of your purposes doubted.

I am, &c.,

LEWIS CASS.

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[Inclosure No. 9—7.]

[From British State Papers, 1859-1860, pp. 188-190.]

Lord Napier to the Earl of Malmesbury.

No. 168.] WASHINGTON, *April 4, 1859.* (Received April 19.)

MY LORD: I gather from the conversation of General Cass that the Government of the United States have conceived some dissatisfaction in regard to two points connected with the proceedings of Her Majesty's representative in Central America.

These points are—

1st. The insertion in the English transit treaty of the last clause of Article XXII, stipulating that Her Majesty's Government will not suffer the organization of piratical expeditions against Nicaragua in the British dominions, or the participation of British subjects in the domestic struggles of that Republic; and

2d. The conclusion and ratification of the transit treaty separately from that which provides for the cession of Mosquitia.

On the first head, General Cass remarks that the adoption of the clause referred to interferes with the conclusion of the American treaty; for such a clause, even if sanctioned by the President and Cabinet, which it never could be, would certainly be expunged by the Senate, as binding the Government of the United States to execute its own existing laws—a superfluous and offensive engagement.

I observed to General Cass in reply to this reflection, that I was disposed to regret the adoption of the clause alluded to. I presumed it had been insisted on by the Nicaraguan Government as a *sine qua non* with Sir William Ouseley; and that Her Majesty's commissioner had naturally felt himself justified in assenting to it rather than see his negotiation entirely frustrated. I hoped that the persuasions of Mr. Lamar, and the advice of Mr. Jerez, recently offered to his Government from Washington, might still induce President Martinez and the Assembly to ratify the American treaty without the obnoxious provision.

With reference to the conclusion of the transit treaty, without the adjustment of that which regulates the transfer of Mosquitia, I suggested that Sir William Gore Ouseley had probably met with some unexpected opposition on the part of the Nicaraguan Government, and had been obliged to refer to London for further instructions. In the interval he had proceeded to Costa Rica for the purpose of concluding the contemplated arrangements with that Government. I made no doubt your lordship would regret, as I did myself, that the two treaties had not been cotemporaneously terminated, which would have been more consistent with all the interests involved.

General Cass reiterated several times that he had no doubt of the good faith and conciliatory intentions of Her Majesty's Government: but for the preservation of a friendly understanding between the two countries, he thought it essential that a settlement of the Mosquito and Bay Island questions should not be delayed, and he would direct Mr. Dallas to submit his views to your lordship on those subjects.

The Secretary of State then expressed himself with some resentment against the Government of Nicaragua on account of their unjustifiable treatment of the transit steam vessels employed on the San Juan River. It appears that on some alarm of invasion the Nicaraguan authorities

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ordered the vessels above mentioned to come to an anchor under the guns of one of the river forts; that on their refusal to obey, the Americans serving on board were arrested, the vessel seized, and some citizens of the United States subjected to forced labor and other hardships.

In conclusion, General Cass emphatically informed me that instructions would instantly be issued to General Lamar ordering him to leave Nicaragua, unless, within the period of ten days after the receipt of his letters, the Cass-Yrisarri treaty should be ratified in the form adopted by Sir William Ouseley, excepting the last clause of Article XXII referred to above, and unless ample reparation and apology should be afforded for the outrage perpetrated on the river steamers. If, after the withdrawal of the United States minister, a satisfactory adjustment of all the questions in controversy were not attained before the meeting of Congress, the assent of that body would be demanded with a view to the declaration of war against Nicaragua.

Such an issue, said General Cass, would be highly deplored by the Government of the United States; but they had been trifled with too long already. Her Majesty's Government and the Government of France would also, he observed, have many reasons to regret the disturbance of peace in the quarter referred to; and he intimated that their counsels might be properly and advantageously employed in inducing the Nicaraguan Government to adopt a wiser course towards the United States, while it could still be embraced with success.

I assured General Cass that I made no doubt Her Majesty's Government would continue to give the Government of President Martinez the advice, which had been already more than once offered, viz, to make all the concessions in their relations with the United States which are now desired, and which can not appear unreasonable; for all the modifications in the Cass-Yrisarri treaty embodied in Sir William Ouseley's convention are acceded to here, except the addition to Article XXII, which could not possibly be entertained by this Government.

I have, &c.,

NAPIER.

[Inclosure—Translation.]

Extract from Article XX of the English treaty with Nicaragua.

Her Britannic Majesty will prohibit and prevent the formation of armed expeditions in her dominions, either for the invasion of Nicaragua or with the intention or under the pretext of assisting the parties or political bodies which may exist in that country.

[Inclosure No. 9—8.]

[From British State Papers, 1859-1860, p. 209.]

The Earl of Malmesbury to Sir W. G. Ouseley.

No. 175.] FOREIGN OFFICE, *April 30, 1859.*

SIR: I have to state to you that Mr. Dallas called at the foreign office yesterday, in order to read to me a dispatch which he had received from General Cass, expressing the uneasiness with which the Government of the United States regarded the progress of your negotiations

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with Nicaragua; those negotiations having, up to the last dates from Central America, left untouched the question of the surrender of the Mosquito protectorate, while they had resulted in the conclusion of a commercial treaty which had been ratified by Nicaragua, although that Republic had refused to ratify the commercial treaty which it had concluded a year previously with the United States. General Cass also observes, upon the objectionable nature of the clause to which you had agreed concerning armed expeditions, and says that addition is made by Nicaragua the occasion for defeating the Cass-Yrisarri treaty.

I informed Mr. Dallas in reply that Her Majesty's Government had already expressed to you their regret that you should have proceeded to negotiate the commercial treaty with Nicaragua in apparent disregard of that which is by far the more important of the two, viz, the treaty for the surrender of the Mosquito protectorate, and that Her Majesty's Government had informed you that Her Majesty would not be advised to ratify the one without the other also.

I further informed Mr. Dallas that Her Majesty's Government had rejected the clause to which you had agreed on the subject of armed expeditions, which they, equally with the Government of the United States, regarded as in the highest degree objectionable.

I have now to urge upon you in the strongest manner the necessity of your bringing these negotiations to a conclusion in exact conformity with your instructions. Her Majesty's Government deprecate the delay which has already taken place, and they desire that you will make every effort to conclude the treaties, and to bring them home with you.

I am, &c. MALMESBURY.

[Inclosure No. 9—9.]

[From British State Papers, 1859-1860, p. 228.]

Lord Lyons to the Earl of Malmesbury.

[Extract.]

No. 196.] WASHINGTON, *May 10, 1859.* (Received May 24.)

I yesterday, in obedience to the orders conveyed to me by your lordship's dispatch of the 21st ultimo, explained to General Cass the course pursued by Her Majesty's Government in regard to the treaty signed by Sir William Gore Ouseley with the Government of Nicaragua on the 18th January last.

I pointed out to General Cass that Sir William Ouseley had consented to various modifications of the terms which he had been directed to propose to Nicaragua. Of these modifications there were, I said, several which Her Majesty's Government could not approve; and among those disapproved was the clause concerning what were commonly called "filibustering" expeditions, which had been added to Article XXII. This clause Her Majesty's Government considered as both unnecessary and undignified.

I proceeded to inform General Cass that, in admitting the modifications in question, Sir William Ouseley had acted entirely on his own responsibility, for he had been furnished by Her Majesty's Govern-

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ment with drafts of the treaties to be concluded, and had been instructed not to assent to any alterations which were not of a purely formal and immaterial character.

Her Majesty's Government had, I went on to say, promptly refused to ratify the treaty as signed by Sir William Ouseley, and had instructed him to sign a new treaty, omitting the clauses objected to by Her Majesty's Government. Sir William Ouseley had, morever, been repeatedly directed distinctly to inform the Government of Nicaragua that Her Majesty's Government regarded the object of his mission that is, the conclusion of the treaty of commerce—and of the treaty respecting the Mosquito protectorate—as a whole, and that one treaty would not be ratified without the other.

I had a fortnight previously been enabled, by information afforded me by your lordship's dispatch of the 30th of March last, to explain to General Cass the sentiments of Her Majesty's Government in regard to these matters. Nevertheless, General Cass appeared to receive, with very remarkable satisfaction, the more formal and definitive communication, which, in execution of your lordship's orders, I made to him yesterday. He said very emphatically that the course pursued by Her Majesty's Government was most honorable, and that the President would be extremely gratified by my communication.

With respect to the recent treaty between the United States and Nicaragua, General Cass said that, upon examination, it did not appear to be all that could be wished; still the President was prepared to accept the whole of it with the single exception of the clause concerning filibustering expeditions.

LYONS.

[Inclosure No. 9—10.]

[From British State Papers, 1859-1860, p. 241.]

Lord Lyons to the Earl of Malmesbury.

No. 206.] WASHINGTON, *May 30, 1859.* (Received June 12.)

MY LORD: On the 25th and 26th instant I had some conversation with General Cass respecting the affairs of Nicaragua. General Cass told me that General Jerez, the Nicaraguan minister to the United States, was to return home on the 5th of next month, and that he had requested to be informed definitely, before his departure, of the intentions of the President with respect to the treaty recently negotiated by General Lamar.

General Cass told me that he should state to General Jerez, in general terms, that the President accepted the whole treaty, with the exception of the clause directed against what are commonly termed "filibustering expeditions." That clause the Government of the United States absolutely rejected.

There was, however, General Cass said, a reservation which he should have to make. He had observed in Article XXII of the treaty signed by Sir William Ouseley a clause which did not exist either in the draft with which Sir William Ouseley was furnished by Her Majesty's Government or in General Lamar's treaty. The clause to which he referred stated that, in case of imminent danger to the lives and properties of British subjects, Her Majesty's forces might act for their

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protection without obtaining the previous consent of the Nicaraguan authorities. If this clause should be maintained in the new treaty which Sir William Ouseley had been directed to sign, the United States would insist upon the same privilege being secured to them; in fact, they would require to be placed upon a perfect equality with Great Britain in this respect. General Jerez would be authorized to inform his Government that upon this point being settled and the "filibustering" clause struck out, the President would send the treaty to the United States Senate for ratification.

I saw General Gerez himself the day before yesterday. He confirmed the account given above of the intentions of the United States Government; and he told me further that he hoped that, by negotiation with the American companies holding contracts for construction of the interoceanic route, he should be able, before his departure, to effect a compromise which would satisfy both the companies themselves and the Government of the United States.

I have, &c., LYONS.

[Inclosure No. 9—11.]

[From British State Papers, 1858-1860, p. 242.]

Lord Lyons to the Earl of Malmesbury.

[Extract.]

No. 207.] WASHINGTON, *May 30, 1859.*

I perceive by your lordship's dispatch to Sir William Ouseley of the 9th instant, of which you did me the honor to send me a copy in your dispatch of the 11th instant, that Sir William is directed to bring the treaty with Nicaragua respecting Mosquitia to an immediate conclusion; and, as soon as that treaty and the general treaty with the same State are signed and ratified, to return at once to England.

The frank and full explanation which your lordship enabled me to give respecting the delay in the conclusion of the treaty for the abandonment of the Mosquito Protectorate were most acceptable to the President, and produced a very remarkable effect on the tone of the public press. With a view to keep up the good feeling which has happily since prevailed, it would be very desirable that, before the intended departure of Sir William Ouseley becomes generally known in this country, I should be able to state distinctly the intentions of Her Majesty's Government with respect to the treaty which remains to be negotiated with Honduras, in order to complete the settlement of the Central American questions.

It will be in your lordship's recollection that in the dispatch to Lord Napier, dated the 18th of December last, of which he gave by your lordship's order a copy to General Cass, it was stated that Her Majesty's Government intended to confide the negotiation of that treaty to Sir William Ouseley; and that so soon as Sir William should have concluded the negotiations in which he was then employed Lord Napier would immediately be enabled to state to General Cass the details of his second mission, and the conditions with Honduras on which the cession of the Bay Islands to that State was contemplated.

Your lordship may perhaps deem it expedient that I should be directed to give at once some explanations in order to prevent unfounded

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imputations upon the good faith of Her Majesty's Government if the news of Sir William Ouseley's departure for England should not be accompanied by some definite declaration respecting the negotiations with Honduras.

LYONS.

[Inclosure No. 9—12.]

[From British State Papers, 1859-1860, p. 245.]

The Earl of Malmesbury to Lord Lyons.

No. 211.] FOREIGN OFFICE, *June 16, 1859.*

MY LORD: With reference to your lordship's dispatch of the 30th ultimo, I have to observe that Sir William Ouseley's health having suffered from the climate of Nicaragua, Her Majesty's Government did not consider it desirable that his stay in Central America should be prolonged, and that they consequently instructed him to return home so soon as he should have concluded the treaties which he had been charged to negotiate with the Republics of Nicaragua and Costa Rica. They, at the same time, however, sent to Mr. Wyke full powers to conclude a treaty with Guatemala, defining the limits between that State and the settlement of Belize, and they subsequently informed Mr. Wyke, in a dispatch of which a copy is inclosed, that it was their intention to confide to him the negotiation of the other pending conventions with the States of Central America.

Her Majesty's Government have learned by the West India mail which has just arrived that Mr. Wyke has concluded the treaty with Guatemala respecting British Honduras, but the state of his health having obliged him to avail himself, as you will see by the inclosed dispatch, of the permission which he had previously received to return home, some little delay must, much to the regret of Her Majesty's Government, take place before the further negotiations to which I have adverted can be carried through.

I am, &c., MALMESBURY.

[Inclosure No. 9—13.]

[From British State Papers, 1859-1860, p. 249.]

Lord Lyons to the Earl of Malmesbury.

No. 219.] WASHINGTON, *July 5, 1859.* (Received July 18.)

MY LORD: Since I wrote my immediately preceding dispatch of this date relative to the negotiations in Central America, I have had a few minutes' conversation with General Cass.

The General told me that the United States plenipotentiary in Central America, General Lamar, was about to return home, and that it was not the intention of the President to accredit a diplomatic agent to Nicaragua until the Government of that Republic should remove from the treaty which they had signed with General Lamar the clause concerning "filibustering" expeditions, and ratify the remainder of the treaty.

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General Cass then asked me how the British negotiations were going on. I said that Sir William Ouseley was, by your lordship's orders, urging in the strongest manner upon the Government of Nicaragua the adoption of the terms proposed by Her Majesty's Government for the abandonment of the Mosquito Protectorate; and that Mr. Wyke had already concluded with Guatemala a convention determining the boundary of the settlement of Belize. I added that Sir William Ouseley was very anxious that I should convince the Government of the United States that the delays which had so unfortunately occurred respecting the abandonment of the Mosquito Protectorate were in no degree attributable to him. I observed that Sir William had sent me ample information on this point, but that, as I was aware that General Cass was very busy, I would not take up his time by entering into details at the moment. I had, I said, already been able to write to Sir William Ouseley to tell him that the General had, on more than one occasion, said to me that he did not consider that it was Her Majesty's plenipotentiary who was to blame for the delays. General Cass then said that neither British nor American plenipotentiaries could do anything with the Nicaraguans, who did not understand their own interests.

The General proceeded to ask me what had been done respecting the cession of the Bay Islands to Honduras.

I replied that it had been the intention of Her Majesty's Government to confide the negotiation on that matter to Mr. Wyke, Her Majesty's chargé d'affaires at Guatemala, and that instructions to that effect had been sent to him by your lordship. Mr. Wyke had, however, unfortunately been compelled by ill health to quit his post, and was already on his way to England when your lordship's orders reached him. This might, I said, much to the regret of Her Majesty's Government, cause some little delay in the prosecution of the negotiation.

General Cass, without making any comment upon this explanation, passed on to another subject.

I have, &c., LYONS.

[Inclosure No. 9—14.]

[From British State Papers, 1859-1860, p. 267.]

Lord J. Russell to Mr. Wyke.

[Extract.]

No. 227.] FOREIGN OFFICE, *August 15, 1859.*

In order to convey to you the instructions of Her Majesty's Government for your guidance in the negotiation which you are to undertake with the Government of Nicaragua it is necessary that I should explain what has already been done with a view to the settlement of the question in discussion with that Republic.

When Sir William Gore Ouseley proceeded from the United States to Central America at the end of October last, he was furnished with drafts of three treaties to propose to the Government of Nicaragua:

1. A treaty of friendship, commerce, and navigation, containing certain articles relative to the interoceanic transit. This draft was founded upon the treaty concluded on the 16th of November, 1857, between the

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United States and Nicaragua, and commonly called the Cass-Yrisarri treaty. The commercial articles of the latter were slightly modified, so as to adapt them to our system; the articles relative to the transit were adopted from the American treaty, with very little change, and that purely immaterial.

2. A treaty relative to the Mosquito territory and the claims of British subjects. The arrangements of this draft were taken from the Clarendon-Dallas treaty of October 17, 1856.

3. A convention or agreement respecting post-office arrangements.

The last-mentioned convention has been concluded and put in operation, so that it may be dismissed from consideration.

Of the other two drafts I transmit to you copies, as well as copies of the Clarendon-Dallas treaty, which, you are aware, was never ratified, and of the articles of the Cass-Yrisarri treaty which relate to the interoceanic transit.

After the arrival of Sir William Gore Ouseley in Nicaragua he communicated to the Nicaraguan Government, first the draft of the treaty of commerce and navigation, and, shortly afterwards, the draft of the treaty respecting the Mosquito territory. He proceeded in the first place with the negotiation of the former treaty, and signed it on the 18th of January last, having, however, admitted into it various alterations of the draft given to him. Some of those alterations were of no great importance, but others which occurred in the articles respecting the interoceanic transit were of a very embarrassing nature.

In order to show you clearly what they were, I transmit a printed copy of the draft, with the alterations marked in manuscript, and Sir William Gore Ouseley's reasons for admitting them.

Her Majesty's Government, having taken the treaty into consideration, were of the opinion that some of the alterations of the draft were such as they could not sanction, and the Earl of Malmesbury accordingly informed Sir William Ouseley that the treaty could not be ratified in the form in which he had signed it. His lordship at the same time transmitted to him a draft in which were marked such of the alterations as Her Majesty's Government were prepared to admit, telling him, however, that they considered that treaty and the treaty respecting the Mosquito territory as forming together one and the same arrangement, and that Her Majesty's Government would not ratify one without the other. A copy of the draft in question is also inclosed.

In this position the negotiation of the treaty rests at the present moment, so far as Her Majesty's Government are aware.

The most important and embarrassing alteration of the draft which Sir William Gore Ouseley admitted was the introduction into Article XXII of a clause by which Great Britain engaged to discourage and prevent the organization of filibustering expeditions in her territories against those of Nicaragua. It is obvious that this engagement had no real meaning so far as Great Britain and Nicaragua are concerned, except as a simple concession. But the Nicaraguan Government, having prevailed upon the British negotiator to consent to its insertion in the British treaty, made that insertion a ground for endeavoring to insert it likewise in the Cass-Yrisarri treaty. The treaty, after great delay and much communication between the Governments of Nicaragua and of the United States, seemed on the point of being ratified, with some slight modifications. The attempt by Nicaragua to introduce at the last moment a new clause which the American Government

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considered an insult, especially when proposed under the shelter, as it were, of a similar clause introduced without any practical meaning into a treaty between Great Britain and Nicaragua, justly excited the displeasure of the American Government, and has led to the withdrawal of their minister and the threat of a resort to force if the Cass-Yrisarri treaty be not immediately ratified without the obnoxious clause.

The insertion of the clause in the British treaty might, moreover, have created an unfriendly feeling on the part of American Government towards Great Britain had not Her Majesty's Government set themselves right by at once informing the American Government that the clause was added to the treaty without their authority, and was disapproved.

I now turn to the negotiation in regard to the draft of treaty respecting the Mosquito territory. I have already stated that Sir William Gore Ouseley presented the draft of that treaty to the Nicaraguan minister soon after the draft of the treaty of commerce. The latter was negotiated and signed in the first place. The Nicaraguan minister having obtained by the treaty of commerce a guarantee of the neutrality of the interoceanic communication and an engagement obliquely directed against American filibusters, showed no great anxiety to proceed with the second treaty. Sir William Gore Ouseley indeed pressed it upon his attention, but finding that his business made no progress, he resolved upon visiting Costa Rica with the view of completing his negotiations there and afterwards returning to Nicaragua to conclude the Mosquito treaty. After his arrival at San José he received an official communication from Señor Zeledon, stating that the Nicaraguan Government had consulted the Senate of the Republic in regard to the draft of treaty, and detailing certain modifications of the draft which the Senate considered necessary, adding that if Sir William Gore Ouseley were able to accept them a plenipotentiary would be appointed to confer with him.

Under these circumstances Sir William Gore Ouseley could do no more than transmit Señor Zeledon's communication to Her Majesty's Government for their consideration. On examining Señor Zeledon's note, it was found somewhat difficult to form an opinion with regard to it. He had merely described, under a series of heads, the nature of the modifications which his Government desired, but without offering a complete counterdraft of the treaty. Consequently, it was not clear whether the Nicaraguan Government proposed to suppress or to retain such passages of the draft as were not specifically superseded by the particular modifications mentioned in his letter. Sir William Ouseley was therefore informed that so far as Her Majesty's Government understood the scope of Señor Zeledon's modifications, they did not offer any insuperable obstacle to further negotiation, with, however, the exception of two stipulations; one which appeared to supersede the arrangement proposed by our draft for the payment of a pecuniary compensation to the Mosquito King for the abandonment of his interest in the territory which is to be placed under the sovereignty of Nicaragua; the other, which would have bound Great Britain indefinitely to continue her protection to the Mosquito coast until the conclusion of a joint arrangement between Great Britain and the United States and Nicaragua on the principle of the Clayton-Bulwer treaty. Lord Malmesbury informed Sir William Gore Ouseley, with reference

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to this last proposition, that the utmost Her Majesty's Government could assent to would be to continue the British protection for the period of a year after the signature of the treaty, so as to give Nicaragua time to prepare for its defense; and he was authorized to insert an article to that effect in the treaty.

In this state the negotiation relative to the Mosquito question now remains. But with a view to the conclusion of this embarrassing affair, Her Majesty's Government have remodeled the draft of treaty in such a manner as to make it conformable to the wishes expressed by the Nicaraguan Senate in all points except the two which relate to the pecuniary compensation to the Mosquito chief and the indefinite continuance of the British protectorate. Her Majesty's Government propose that their protectorate shall cease three months after the exchange of the ratifications of the treaty, a period which, although not so long as that mentioned by Lord Malmesbury, is in reality not so much shorter as it would appear to be, because in the one case the year was to date from the day of the signature, and in the other the three months are to date from the day of the exchange of ratifications.

I transmit to you a copy of the new draft, which you are to propose to the Nicaraguan Government.

It is possible that before you reach Nicaragua Sir William Gore Ouseley may have returned thither, and may have concluded one or both of the treaties. If he should have signed the new treaty of commerce and navigation in the terms of the amended draft sent to him in the Earl of Malmesbury's dispatch of the 23d of March last, you will not have occasion to enter upon that part of the question; but if, as is most likely, that treaty remains unsigned when you arrive, you will state to the Nicaraguan Government that you are authorized to sign it in the terms of the amended draft which has been communicated to them by Sir William Gore Ouseley, provided the treaty about the Mosquito territory be signed at the same time.

It is not at all probable, judging from the tenor of Sir William Ouseley's late dispatches, that he will have concluded the Mosquito treaty. If, however, he should have done so, and the treaty shall have been confirmed by the Nicaraguan Congress, it will be best not to disturb the arrangement; but if the treaty has either not been signed or has been signed and not ratified by the Congress, you will propose the draft with which you are furnished, and which will doubtless be more acceptable to the Nicaraguan Government than the treaty which Sir William Ouseley would feel authorized to propose to sign. Even if he should have signed a treaty the new one can be substituted for it.

You will speedily form an opinion as to the success of your mission, and Her Majesty's Government would not wish it to be much prolonged. You will state to the Nicaraguan Government that Her Majesty's Government make this last effort to arrange the Central American question so far as Nicaragua is concerned; that they expect a prompt and frank acceptance of the very favorable terms which they now offer; and that if any hesitation or delay takes place Her Majesty's mission will be at once withdrawn and Great Britain will leave the Republic to take the consequences of their infatuation. I trust, however, that the Nicaraguan Government will have sufficient discretion to see the dangerous position in which it would then be placed and the necessity of at once arranging the questions which have been so long pending with this country.

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I have only to add that Her Majesty's Government expect not only that the treaties should be properly signed, but that they should be as promptly ratified. If the Nicaraguan Congress be not in session at the time it is not too much to require that in a matter of so much importance a special session should be convoked for the purpose of passing the treaties, so that they may be ratified before your departure. The ratifications might, indeed, be confided to you with instructions to M. Marcoleta to exchange them at London against those of Her Majesty. You will, however, warn the Government that it will be vain for them to ratify the treaty of commerce without ratifying also the Mosquito treaty, for Her Majesty's Government will not accept the one without the other.

J. RUSSELL.

10.—ARTICLES 14, 15, 16, 17, 18, AND 19 OF THE TREATY OF JUNE 21, 1867, BETWEEN THE UNITED STATES AND NICARAGUA. DICKINSON-AYON.

ARTICLE XIV.

The Republic of Nicaragua hereby grants to the United States, and to their citizens and property, the right of transit between the Atlantic and Pacific Oceans through the territory of that Republic, on any route of communication, natural or artificial, whether by land or by water, which may now or hereafter exist or be constructed under the authority of Nicaragua, to be used and enjoyed in the same manner and upon equal terms by both Republics and their respective citizens, the Republic of Nicaragua, however, reserving its rights of sovereignty over the same.

ARTICLE XV.

The United States hereby agree to extend their protection to all such routes of communication as aforesaid, and to guarantee the neutrality and innocent use of the same. They also agree to employ their influence with other nations to induce them to guarantee such neutrality and protection.

And the Republic of Nicaragua, on its part, undertakes to establish one free port at each extremity of one of the aforesaid routes of communication between the Atlantic and Pacific Oceans. At these ports no tonnage or other duties shall be imposed or levied by the Government of Nicaragua on the vessels of the United States, or on any effects or merchandise belonging to citizens or subjects of the United States, or upon the vessels or effects of any other country intended, bona fide, for transit across the said routes of communication, and not for consumption within the Republic of Nicaragua. The United States shall also be at liberty, on giving notice to the Government or authorities of Nicaragua, to carry troops and munitions of war in their own vessels, or otherwise, to either of said free ports, and shall be entitled to their conveyance between them without obstruction by said Government or authorities, and without any charges or tolls whatever for their transportation on either of said routes: *Provided*, said troops and munitions of war are not intended to be employed against Central American nations friendly to Nicaragua. And no higher or other

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charges or tolls shall be imposed on the conveyance or transit of persons and property of citizens or subjects of the United States, or of any other country, across the said routes of communication, than are or may be imposed on the persons and property of citizens of Nicaragua.

And the Republic of Nicaragua concedes the right of the Postmaster-General of the United States to enter into contracts with any individuals or companies to transport the mails of the United States along the said routes of communication, or along any other routes across the Isthmus, in its discretion, in closed bags, the contents of which may not be intended for distribution within the said republic, free from the imposition of all taxes or duties by the Government of Nicaragua; but this liberty is not to be construed so as to permit such individuals or companies, by virtue of this right to transport the mails, to carry also passengers or freight.

Article XVI.

The Republic of Nicaragua agrees that, should it become necessary at any time to employ military forces for the security and protection of persons and property passing over any of the routes aforesaid, it will employ the requisite force for that purpose; but upon failure to do this from any cause whatever, the Government of the United States may, with the consent or at the request of the Government of Nicaragua, or of the minister thereof at Washington, or of the competent legally appointed local authorities, civil or military, employ such force for this and for no other purpose; and when, in the opinion of the Government of Nicaragua, the necessity ceases, such force shall be immediately withdrawn.

In the exceptional case, however, of unforeseen or imminent danger to the lives or property of citizens of the United States, the forces of said republic are authorized to act for their protection without such consent having been previously obtained.

But no duty or power imposed upon or conceded to the United States by the provisions of this article shall be performed or exercised except by authority and in pursuance of laws of Congress hereafter enacted. It being understood that such laws shall not affect the protection and guarantee of the neutrality of the routes of transit, nor the obligation to withdraw the troops which may be disembarked in Nicaragua directly that, in the judgment of the Government of the republic, they should no longer be necessary, nor in any manner bring about new obligations on Nicaragua, nor alter her rights in virtue of the present treaty.

Article XVII.

It is understood, however, that the United States, in according protection to such routes of communication, and guaranteeing their neutrality and security, always intend that the protection and guarantee are granted conditionally, and may be withdrawn if the United States should deem that the persons or company undertaking or managing the same adopt or establish such regulations concerning the traffic thereupon as are contrary to the spirit and intention of this treaty, either by making unfair discriminations in favor of the commerce of any country or countries over the commerce of any other country or

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countries, or by imposing oppressive exactions or unreasonable tolls upon mails, passengers, vessels, goods, wares, merchandise, or other articles. The aforesaid protection and guarantee shall not, however, be withdrawn by the United States without first giving six months' notice to the Republic of Nicaragua.

Article XVIII.

And it is further agreed and understood that in any grants or contracts which may hereafter be made or entered into by the Government of Nicaragua, having reference to the interoceanic routes above referred to, or either of them, the rights and privileges granted by this treaty to the Government and citizens of the United States shall be fully protected and reserved. And if any such grants or contracts now exist, of a valid character, it is further understood that the guarantee and protection of the United States, stipulated in article XV of this treaty, shall be held inoperative and void until the holders of such grants and contracts shall recognize the concessions made in this treaty to the Government and citizens of the United States with respect to such interoceanic routes, or either of them, and shall agree to observe and be governed by these concessions as fully as if they had been embraced in their original grants or contracts; after which recognition and agreement said guarantee and protection shall be in full force: provided, that nothing herein contained shall be construed either to affirm or to deny the validity of the said contracts.

Article XIX.

After ten years from the completion of a railroad, or any other route of communication through the territory of Nicaragua from the Atlantic to the Pacific Ocean, no company which may have constructed or be in possession of the same shall ever divide, directly or indirectly, by the issue of new stock, the payment of dividends or otherwise more than fifteen per cent. per annum, or at that rate, to its stockholders from tolls collected thereupon; but whenever the tolls shall be found to yield a larger profit than this, they shall be reduced to the standard of fifteen per cent. per annum.

11.—*Mr. Fish to the United States ministers.*

Department of State,
Washington, February 28, 1877.

Sir: For many years past the subject of an interoceanic canal, connecting the Atlantic and Pacific oceans at some point in or adjacent to Central America, has occupied the public mind in this country and abroad. On more than one occasion the matter has been discussed between the United States and several of the States of Central and South America, and treaty negotiations have been entered upon with a view to facilitate the work. Nicaragua and some of the Central American powers have also entered upon treaties with other powers touching this question, and yet, notwithstanding all that has been written, the surveys that have been made, and the amount of considera-

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tion and study which has been given to this enterprise, no active steps have been taken to construct such a canal over any of the contemplated routes.

Dr. Adan Cardenas was accredited to this country some months since in the character of envoy extraordinary and minister plenipotentiary mainly with a view of negotiating a new treaty with reference to this work; and for some time past negotiations to that end have been carried on at Washington. A draft treaty was prepared here, to which it was proposed to obtain the accession of the principal maritime powers and of such other governments as might seem advisable, and under which it was hoped capitalists might be induced to obtain a concession and really enter upon the work of building the canal. It has been found, however, to the regret of this Government, that the views entertained by the Government of Nicaragua would not permit the negotiation of a treaty either in the form proposed or in any form that would address itself to the approval of this Government, or that seemed at all calculated to obtain the confidence or cooperation of the principal maritime powers in furthering the scheme.

The matter, however, has evoked considerable interest, not only among our own citizens and public men, but also among the foreign diplomatic representatives accredited to the United States; and so much inquiry has arisen that I have deemed it important to forward to you, as I do herewith, a copy of the proposed treaty referred to, and of the views of the representative of Nicaragua, as contained in a counter-draft, with certain correspondence on the subject which has taken place. These papers will inform you of the points on which the two Governments have failed to agree.

Should you be applied to concerning the subject, you are authorized to permit the correspondence in question to be perused by the author ities of the country to which you are accredited, in order that the position and views of this Government may be clearly seen; or you may explain such position and views as contained in the draft treaty and the correspondence of the Department herewith sent to such persons as may be interested in the question.

I am, sir, your obedient servant,

HAMILTON FISH.

Señor Cárdenas to Mr. Fish.

[Translation.]

LEGATION OF NICARAGUA,
Washington, January 25, 1877.

SIR: The undersigned, envoy extraordinary and minister plenipotentiary of the Republic of Nicaragua, has the honor to inform the honorable Secretary of State that, having caused the draft of a convention between the United States of America and the Republic of Nicaragua, which the honorable Secretary of State did him the honor to deliver to him in person, to be translated, and having now read its contents, he is able to state his opinion concerning it.

The undersigned takes pleasure in informing the honorable Secretary of State that the Government of Nicaragua being disposed to favor and accept, as he has repeatedly had the honor to assure him,

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anything tending to facilitate the construction of an interoceanic canal through its territory, it seems to him that the draft of a convention which has been communicated to him is in general acceptable in its spirit and purposes, although as to its details and some of its specific provisions it is desirable to introduce in it such changes as are indispensable to cause it to harmonize with the constitution and laws of the Republic, the important object which it has in view being favored at the same time, since, however favorable may be the disposition of the Government of Nicaragua as regards this matter, its liberty of action must necessarily be circumscribed within these limits.

For the explanation of the changes which this circumstance obliges the undersigned to suggest, a conference is necessary, which he begs the honorable Secretary of State to do him the honor to grant him.

In addition to this, however, and in order to make his views more clearly understood, it has seemed to the undersigned that it was of the highest importance to prepare at once and communicate to the honorable Secretary of State, previously to the conference in question, the articles which, in his opinion, should be inserted in the convention.

The undersigned hopes, therefore, that the honorable Secretary of State, considering the aforesaid articles, which he has the honor to inclose, as an integral part of this note, will be pleased, when he shall have read them, to appoint a day for the desired conference.

The undersigned avails himself of this occasion to renew to the honorable Secretary of State the assurances of his most distinguished consideration.

AD. CÁRDENAS.

Hon. HAMILTON FISH, *&c.*, *&c.*, *&c.*

Remarks on the draft of Mr. Fish.

[Translation.]

ARTICLE 1.

Each of the contracting parties to this convention pledges itself to request the other nations with which it is on terms of peace and friendship to subscribe to the obligations contracted by Spain, France, Great Britain, and the United States of America, accepting the advantages already granted by the Government of Nicaragua to the Governments of the above-named countries, and to consider as binding upon themselves the stipulations of Article XIII of the treaty of Madrid of July 25, 1850, those of Articles XXVII, XXVIII, XXIX, XXX, XXXI, and XXXII of the treaty of Washington of April 11, 1869, those of Articles XX, XXI, XXII, XXIII, XXIV, XXV of the treaty of Managua of February 11, 1860, and those of Articles XIV, XV, XVI, XVII, XVIII, and XIX of the treaty of the same city of Managua of June 21, 1867, concluded respectively between the Government of Nicaragua and that of His Catholic Majesty; that of His Majesty the Emperor of the French; that of Her Britannic Majesty, and the President of the United States of America, which are not abrogated, and which have lost none of their binding force.

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ARTICLE 2.

In addition to the proposal and request of adhesion referred to in the foregoing article, the Government of the United States and the Government of Nicaragua also agree to invite, each on its own part, the aforesaid powers with which they are on terms of peace and friendship, including France and Spain, likewise to subscribe to and consider as binding upon themselves the stipulations which were adopted in respect to this matter of the interoceanic canal, the construction of which it is designed to facilitate, by the Government of the United States and that of Great Britain in Articles I, II, III, IV, V, VI, and VII of the treaty concluded at Washington April 19, 1850, between the two nations.

ARTICLE 3.

The Government of Nicaragua, on its part, pledges itself to the aforesaid powers, in return for the obligations which they will contract by their adherence to this treaty, as set forth in the foregoing articles, not only to fulfill and carry out with scrupulous exactitude what it has therein promised, but also to do as follows:

1. To make a grant in favor of such person or persons, corporation or company, as may solicit it, and as, in the judgment of the Government of Nicaragua, may offer the necessary guarantees for the term of ninety-nine years, said grant to contain, for the greater encouragement and benefit of the commerce of the world, the privileges and favors enumerated hereafter in article 6.

2. To protect the person or persons, corporation or company, in whose favor this grant shall be made, from the time of the commencement of the work until its completion, barring the cases provided for in article 7, against every measure of embargo, confiscation, detention, or violence of any kind. It is, however, understood that this does not imply the impunity of the persons to whom this exemption is granted for any violations that they may commit of the laws of Nicaragua within the territory of the Republic.

3. To protect in like manner from embargo, confiscation, interruption, or injury the aforesaid canal, when it shall be completed, together with its appurtenances, so that it shall forever remain free and open to the vessels of all nations, as herein provided.

4. To consent that the neutrality already secured and guaranteed to the canal itself by Spain, France, Great Britain, and the United States of America, and which shall be secured and guaranteed in the same manner by the nations accepting the invitation referred to in articles 1 and 2 of this convention, be extended to a strip of the territory of the Republic running alongside of the canal, parallel to its course, and measuring —— miles in width on both sides; and likewise to that space in both oceans over which the Government of Nicaragua has jurisdiction on both sides of the ports of ingress and egress circumscribed by the arc of a circle drawn from the mouth of said points as its center, with a radius of one hundred and fifty nautical miles.

5. To protect, by all means in its power, using for this purpose its own force, or appealing to that of friendly nations, as agreed in the treaties referred to in article 1 of this convention, not only the neutrality of the canal and of the territory and waters described in the

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foregoing paragraph, but also the innocent use of said canal, and the security of the persons and property belonging to the enterprise and being within the neutral territory.

6. To allow the company receiving the grant and the management of the canal to establish and maintain, at their own expense, such force of special police as they may deem necessary for the security of the interests of the enterprise, provided that the aforesaid police force be subjected to regulations approved by the Government of Nicaragua, and act only within the limits of the canal and its dependencies, subject to the constitution and laws of the Republic.

It is understood, however, that none of these conditional concessions, which are offered as a stimulus to the completion of the work, and in return for the advantages and gurantee solicited, or the declaration of the neutrality of the territory and waters above mentioned, or any other clause, expression, or sentence in this convention, or in the treaties referred to in its article 1, shall ever be interpreted as involving any renunciation or impairment of the jurisdiction and sovereignty of the Republic over the whole of its territory and waters, which jurisdiction and sovereignty are hereby recognized and guaranteed.

Article 4.

Neither of the two contracting parties, and neither of the two nations signing the stipulations and guarantees above mentioned, shall consider itself obliged to recognize or pay any claims which may be presented or claimed to be presented by governments, corporations, companies, or individuals, or associations of individuals, who, previously to the exchange of the ratifications of this convention, shall have undertaken the construction of the canal, or done anything connected with it.

Nevertheless, the Government of Nicaragua hereby declares that there exists, at this date, no grant or grants that can impede, delay, or embarrass the work which shall be undertaken according to the grant which it pledges itself to make on the terms of article 6 of this convention; and it agrees that if any claim shall be presented on this ground, and it be attempted thereby to hinder the work, or if it be found necessary, from any other cause, to remove and terminate it (*i. e.*, the claim) definitely, the Government of Nicaragua will see that this be done.

Article 5.

All the powers signing or adhering to this convention before the commencement of the work, and not availing themselves of the privilege of withdrawal from it, which is stipulated in the treaties referred to in article 1, shall at all times, both in peace and war, have the right of transit through the canal when it shall be completed, and shall enjoy the benefit of the neutral waters at its extremities for the vessels entitled to carry their flag, and also for the cargoes of said vessels, on terms of perfect equality with each other.

Those adhering after the completion of the canal shall enjoy the same rights and benefits after the expiration of —— years from the date of their adhesion.

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ARTICLE 6.

The Government of Nicaragua agrees, as stated in paragraph 1 of article 3 of this convention, that the grant to be made in favor of the person or persons, corporation, or company undertaking the construction of the interoceanic canal shall contain, as indispensable circumstances and conditions, the following:

1. That the aforesaid canal, with its entrances and appurtenances, shall be constructed for and adapted to the passage of vessels not exceeding ———.

2. That the transit or passage duties to be imposed upon vessels shall be calculated upon the gross tonnage. If the vessel be not laden, or in ballast, the dues to be paid shall be fixed according to the volume of water which she draws.

The measurement of the tonnage shall be performed according to the Moorsom system; and when the vessel shall belong to a nation that has adopted that system, and shall be provided with an official register or certificate in which is stated the number of tons which it measures, such statement shall be deemed satisfactory, and no measurement shall be made.

3. That the fixing and alteration of the charges or passage dues to be paid by vessels passing through the canal or any part thereof shall belong exclusively to its board of directors or managers, within the limits allowed by the existing treaties in behalf of the canal.

4. That more than one dollar per head shall never be charged for each passenger passing through the canal or any part thereof.

5. That a discount of 25 per cent be made from the passage dues fixed by the scale in favor of vessels belonging to the nations which have given in their adhesion to this treaty, or which shall hereafter do so, as provided in article 5.

6. That in order better to secure the execution of the treaties on the part of the person or persons, company or companies, receiving the grant, the Government of Nicaragua, and each of the Governments of the nations adhering to this convention, or which shall hereafter adhere thereto, shall have the right to appoint two persons, in order that they may jointly constitute a kind of superior board of vigilance, of an international character, which shall be called the governmental board. The members of this board shall choose, from among their number, their own presiding officer, and shall organize in such manner as they may determine at their first meeting, or, in case of their holding no meeting, according to their wishes, expressed in writing, the will of the majority being adopted, whatever may be the number of those present, or of those who, by letter or otherwise, shall take part in the deliberation.

7. That this governmental board shall have charge of everything connected with the general inspection of the enterprise of the canal in that which relates to its general use and in any way affects the interests of the commerce of the nations adhering to this convention, and shall take care that the stipulations of the treaties and of the grant made be rigidly observed and fulfilled, and that the regulations, dispositions, and measures which shall be adopted by the enterprise and its directors or managers be not in opposition, either in letter or spirit, to the absolute equality which, according to the agreement made, must be observed among the nations which shall have adhered to this convention, and that

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the lofty objects of civilization and progress aimed at by this work be not defeated.

8. That the Government of Nicaragua shall cause to be duly observed, fulfilled, and executed what shall be decided and determined upon by this board, within the limits of its jurisdiction and authority.

Article 7.

On and after the issuance of a grant, as herein agreed, the Government of Nicaragua pledges itself to respect it, and to issue no other grant for the construction of a canal until one of these three things shall have occurred:

1. Until the company or persons in whose favor the grant was made shall declare that they consider the work impracticable.

2. Until the term of two years shall have expired without the works having been commenced, unless the Government of Nicaragua, on consulting with the governmental board, shall consent to an extension of the time.

3. Until, according to the agreement made in the grant, and considering that the company, individual, or corporation in whose favor it shall have been made do not fulfill its terms nor respect the obligations therein contracted by themselves, it shall be demonstrated that the grant has become null and void.

Article 8.

As soon as the canal shall be completed, the Government of Nicaragua shall have the right to require, if it thinks proper, all the laborers, or any part of them who shall have finished their work, or who shall not be needed for the continuance of the enterprise, or who, during the construction of the work, shall have been discharged from the enterprise, to depart, and not to remain in the territory of Nicaragua.

Article 9.

In order to secure the construction of the interoceanic canal, the Government of Nicaragua agrees to make two ports free, one at each extremity of the canal, and also to allow the two ports of San Juan del Sur and Salinas, on the western coast, to be used as places of refuge, and as resting places for vessels having a right to pass through the canal, and which may be obliged to wait there before being able to enter it, or which may have already passed through it.

Vessels thus situated shall not be obliged to pay more than half the charges required from those not intending to sail through the canal.

All the privileges referred to in this article are to be understood as not preventing the Government of the Republic from taking the proper measures to protect the fiscal interests and property of the State against any fraud that may be attempted on the plea of a free port and of the privilege herein granted.

Article 10.

The Government of Nicaragua further agrees to levy no national impost or duty, and not to permit any taxes, duties, or contributions of any kind, except those which are permitted by this treaty, to be

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levied on the canal, the vessels passing through it, or the passengers, goods, or effects on board of the same, or on the capital stock of the company, corporation, individuals, or association that shall undertake the work, or on the towing vessels, storehouses, wharves, machinery, and works of mechanical construction used in operating the enterprise.

And the Government of Nicaragua further agrees that the cargo of no vessels complying with the regulations that shall govern the transit through the canal shall be molested or subjected to examination, provided they do not abuse this privilege to the prejudice of the fiscal interests of the State.

ARTICLE 11.

In order to afford the greater encouragement to the work and assistance to its execution, the Government of Nicaragua promises to grant, gratuitously, and without any compensation whatever, such portion of the public lands, including the sea and tributary waters, as may be necessary for the location and construction of the canal and its branches, and for supplying the same with provisions, and likewise for its wharves, storehouses, buildings, and other appurtenances of the enterprise, and places for depositing the earth and material excavated or to be excavated.

As to the lands belonging to individuals, the Government of Nicaragua guarantees to the enterprise of the canal the privilege of soliciting their appropriation to its use on payment of a just compensation, the whole to be done in accordance with the constitution and laws of the Republic, even without the necessity of furnishing legal proof of the public utility of the work, which is hereby recognized and admitted.

The Government of Nicaragua further promises that it will give the enterprise all the moral and material aid in its power in order that the important object of this work may be more speedily and easily realized.

ARTICLE 12.

As soon as the canal, with its dependencies and appurtenances, is completed, it shall be possessed, controlled, and managed during the whole time that the grant shall last, and according to its terms, by the person or persons, corporation or company, receiving the grant, and no obstacle of any kind shall be placed in their way, nor shall any claim be made to exercise greater intervention in their affairs than is allowed by the terms of this treaty and already agreed upon.

ARTICLE 13.

If differences shall arise between any of the various powers adhering to the terms of this convention, and the person, persons, corporation, or company receiving the grant, in respect to anything connected with the management and use of the canal, or between the aforesaid person or persons, corporation, or company receiving the grant, and the Republic of Nicaragua, with regard to anything in any wise affecting the canal or the matters and things connected with the same, they shall be decided by the governmental board, whose decisions shall be final.

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ARTICLE 14.

Both Governments pledge themselves to use their good offices with that of Costa Rica to the end that it may adhere to the stipulations of this treaty in the part affecting it, in case the question pending between Costa Rica and Nicaragua on the subject of the validity of the boundary treaty of 1858 be decided in its favor; and the Government of the United States, actuated by the desire that the boundary questions between the two republics may be no obstacle to the accomplishment of the work in question, pledges itself to use its good offices with the Government of Costa Rica to the end that the aforesaid questions may be settled by the arbitration of one or more impartial governments.

ARTICLE 15.

If at the expiration of a year from the date of the exchange of the ratifications of this treaty the adhesion of at least four of the maritime powers of Europe shall not have been obtained, the stipulations of the present convention, so far as they add anything to or modify the obligations contracted in the existing treaties, shall be null and void, the said treaties remaining in full force, and the Republic of Nicaragua being fully at liberty to act in the matter as it shall think most conducive to its interests.

ARTICLE 16.

The present convention shall be ratified, and the ratifications exchanged, at Managua, within eighteen months from this date, or sooner if possible.

Señor Cárdenas to Mr Fish.

[Translation.]

LEGATION OF NICARAGUA,
Washington, February 9, 1877.

SIR: The honorable Secretary of State having informed the undersigned, during their interview yesterday, that a counter-draft of a treaty between his Government and that of Nicaragua, which he had the honor to address to him on the 25th ultimo, was absolutely unacceptable, both on account of its form and on account of the essential modifications therein made to the draft presented by the honorable Secretary, the undersigned had the honor to state that he did not attach much importance to the form in which he had presented the modifications, but that he did to their spirit; and that, therefore, if the question of form could cause the discussion to be prolonged beyond the time at the disposal of the undersigned, in view of his desire to bring the negotiation to a speedy termination, he had no objections to withdrawing the modifications presented in the form proposed, and to the adoption, as a basis of discussion, of the honorable Secretary's draft, to which he proposed to make at the same sitting the observations which gave rise to the counter-draft.

This having been agreed upon, the undersigned had the honor to object in general to some of the principal stipulations of said draft,

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which he thinks inadmissible on account of its incompatibility both with the sovereign rights of Nicaragua and the spirit of its constitution and laws, as well as with the interests of the commerce of the world, and particularly with those of the republics of Central America; and he had the honor to hear that the honorable Secretary admitted the justice of some of his observations.

But as the day which the honorable Secretary had been pleased to appoint for this interview was not the most suitable for a full discussion of the draft—it being the day appointed for the reception of the diplomatic corps—the undersigned became aware that the honorable Secretary did not propose to discuss the matter in detail, and was obliged to confine himself to the general observations alluded to, and promised to communicate to the honorable Secretary, as soon as possible, a memorandum of objections to the draft, which he has the honor to send herewith.

He has therein succinctly stated, as the shortness of the time has allowed, the reasons for which, in his judgment, Articles I, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XV, XVI, XVII, and XVIII of the draft of the honorable Secretary of State are inadmissible, leaving the remaining articles without observations, although if the objections made to the principal ones should be adopted, it would be necessary to modify them in order to cause all the parts of the draft to harmonize with each other, and to add some stipulations providing that none of the concessions and privileges granted by Nicaragua to the nations guaranteeing the neutrality of the canal and of the commerce of the world should ever be interpreted to the detriment of her sovereignty and of her fiscal interests.

The undersigned would, at the same time, have proposed the stipulations which, in his opinion, should be substituted for the articles which he thinks inadmissible; but, as most of them are condensed in the draft which has been rejected by the honorable Secretary of State, and which the undersigned considered as withdrawn, it would be desirable, if the honorable Secretary of State considers just, and accepts the reasons on which the undersigned has based his objections, and has thought of any way to avoid the difficulties in question, that he should state his views in a new draft.

But if, which would be matter for regret, the honorable Secretary should be of a contrary opinion, the undersigned hopes that he will be pleased so to inform him as soon as possible, that he may prepare to obey the orders of his Government, inasmuch as the time at his disposal, and the speedy change of administration will not now permit the continuation of negotiations in this matter.

The undersigned has the honor to reiterate to the honorable Secretary of State the assurance of his highest consideration and esteem.

AD. CÁRDENAS.

Hon. HAMILTON FISH, *&c.*, *&c.*, *&c.*

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Memorandum of objections made by the minister of Nicaragua to the draft of a treaty between the Government of the United States and that of Nicaragua, presented by the honorable Secretary of State January 25, 1877.

[Translation.]

ARTICLE I.

This article is inadmissible on the terms proposed, because, the invitation being limited to the principal maritime powers with which the contracting Governments are on terms of peace and friendship, the other uninvited nations are excluded from the advantages offered to those accepting the convention, and are therefore subjected, according to the following stipulations, to a scale of tolls so high that it would exclude their flag from the use of the canal. This would be the condition of all the nations of the American continent (with the exception of the United States), and even of the republics of Central America, to whose territory the route belongs; and the canal, instead of being, as was to be hoped, and as the Government of Nicaragua desires to have it, a universal highway, open to the world, on conditions of perfect equality, would be converted into a monopoly for the benefit of a few maritime powers, by the mere fact of the guarantee of neutrality, which guarantee is a purely moral one, and to which many of them are already pledged, without that privilege, by treaties with Nicaragua.

With regard to the stipulations and guarantees to which the article refers, which are acceptable in general, with some slight modifications, it would be desirable to add, in order to give greater security to the route, and to maintain equilibrium between the maritime powers guaranteeing its neutrality, and in conformity with the agreement made between the United States and England, a clause providing that none of them shall occupy, fortify, colonize, assume, or exercise any dominion whatever over Nicaragua or over any part of Central America.

The neutrality of a strip 5 miles wide on each side of the canal for the object in view seems unnecessary. The neutrality of a great zone, 10 miles wide, which would comprise one of the principal centers of the population of the Republic, is purposeless. Two miles on each side are more than sufficient, and can be granted.

Paragraphs 3 and 5 of this article must be explained in such a way that it will be understood that the capacity of constructor of the canal or employé thereof does not involve the inviolability of person or property so as to place them beyond the reach of any legal action. The company and its employés must not consider themselves as beyond the relations of common law.

ARTICLE IV.

This article is absolutely inadmissible, because restrictions are thereby imposed upon Nicaragua, in the exercise of her administrative acts, which cannot fail to affect her independence, and which no other nation would admit under similar circumstances. The acts of the Congress of Nicaragua, in the exercise of its constitutional powers, necessary to invest a concession with the authority of law, would be liable to be rejected and nullified by any of the foreign Governments to which is given the power of approving them in their spirit and form. This

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power, moreover, is superabundant, since the conditions of the concessions to be granted by Nicaragua are also fixed, and since Nicaragua pledges herself, by this convention, to a series of concessions calculated to favor the interests of the commerce of the world, and to give confidence and security to the capital invested in the work, which obligations she would be bound to respect on making a grant.

The second condition of this article is inadmissible for the reasons stated in the observations on article 1; and because it would oblige the company undertaking to construct the canal, to increase the tolls to the detriment of the interests of nonfavored commerce, or it would have to reduce them to a fair rate, to the prejudice of its own interests.

The creation of the board of control, to which the third condition refers, although admissible in principle, is not so with the latitude of powers conferred upon said board. It is proper that the nations guaranteeing the neutrality of the canal should unite in forming an international board of council of vigilance to exercise a general supervision over the enterprise, so far as regards the general use of the canal, and so far as this can, in any wise, affect the interests of the nations; it does not, however, seem proper for another kind of powers to be granted, to the prejudice of the interests of the enterprise, or for the right of intervention to be granted to said board in matters which, by reason of their very nature, are within the province of the Government of Nicaragua alone.

It is a sufficient guarantee for the nations to have representatives to see that the company comply with the terms of the grant, which must be in accordance with existing treaties. Moreover, as the protection of the Governments is conditional, and may be withdrawn, according to the stipulations of paragraph 6, article 1, if the company adopts regulations with respect to trade which are contrary to the spirit and design of this convention; and, as moreover, by treaties still in force between Nicaragua and other nations, a limit has been placed to the profits of the enterprise, it is neither proper nor necessary for the board of control to have the right to approve and reform the tariffs.

The fifth condition, which refers to an armed police in the neutral territory, is admissible, if it be provided that such police shall be governed by regulations made by the Government of Nicaragua, and that it shall act only within the limits of the canal and its dependencies, subject to the constitution and laws of the Republic. A body of police, independent of the Government, and not subject to the laws of Nicaragua, would be an anomaly incompatible with the sovereignty of the State.

The sixth condition, in the part referring to the approval of the charges to be levied per ton upon each vessel, is admissible for the reasons stated in speaking of the powers of the board of control.

For the same reasons, and in view of what has been said in respect to the first part of article 4, the seventh and eighth conditions cannot be admitted.

The ninth condition would be acceptable provided that portion were suppressed which refers to private armed vessels, both in view of the danger of filibustering and piratical expeditions, and because this condition would render the convention unacceptable to those European nations which have condemned the principle of privateering.

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Article V.

This article seems unnecessary, because as soon as the Government of Nicaragua makes a grant, by that very fact it becomes obliged to respect it until it becomes null and void, according to its terms.

Article VI.

This is acceptable, with the addition, after the phrase "including the Government of Nicaragua," of the following, "and the other Governments of Central America."

Article VII.

This article is inadmissible because the Government of Nicaragua cannot assume all the obligations of article 1, some of which would imply a renunciation of its sovereign rights to the zone occupied by the canal, such as that of not maintaining exclusive authority over the canal, and of never erecting or maintaining on it or in its vicinity fortifications commanding it.

The result of this would be that the control of the canal would be taken away from Nicaragua, or that she would have a very small share of it, together with the other guaranteeing nations. Moreover, the article binds Nicaragua to all the guarantees of article 1, and to the others which are granted by this convention, in an absolute manner, while the Government of the United States binds itself thereto only conditionally by the terms of article 15.

Article VIII.

The final portion of this article is objectionable, inasmuch as it provides that the ports of San Juan del Sur and Salinas may be used gratuitously as harbors of refuge and resting places for vessels having the right to pass through the canal; because this would oblige Nicaragua to declare open two ports unnecessary to her commerce, thereby occasioning her expense in maintaining guards for the protection of her fiscal interests, police, &c., for the prevention of smuggling, without receiving anything in return. It might be admitted, provided a fair reduction were made in the ordinary duties in favor of the vessels referred to.

Articles IX, X, and XI.

These articles do not seem to come within the scope of this treaty. They treat of a grant, and the Government of Nicaragua is ready to allow, without any necessity of providing for it by treaty, and with some modifications, all that is asked therein for the company, and much more, and the company will not fail to demand it in its grant; moreover, the privilege of appropriating private property, as asked for, is at variance with the constitution and laws of the Republic.

Article XII.

This article might be accepted with the addition after the phrase "except in the manner prescribed by this convention" of the following: "*and according to the terms of the grant.*"

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ARTICLE XIII.

This is inadmissible, because these docks, with a force of foreign police in the territory of Nicaragua, might be considered as *points occupied* by foreign nations. It does not tend, moreover, to facilitate the special object of this convention, and would rather obstruct the ports, since the same right would belong to all the nations adhering to the convention. It seems more proper that the construction of docks for the vessels of the whole world be left to private enterprise.

ARTICLE XV.

This article is not admissible in the conditional terms in which it is drawn. It makes the convention a unilateral contract, in which the only obligation contracted by the Government of the United States is imperfect, and consequently much less binding than the obligations contracted by it in this respect by the treaty of Managua of June 20, 1868, whereas Nicaragua pledges herself absolutely to do much more than she is obliged to do by the aforesaid treaty, which, viewed in connection with the stipulations of Article XVII of the draft, limits, to a certain extent, the obligations contracted by the United States, while Nicaragua contracts greater and much more serious ones.

ARTICLE XVI.

Admitted, striking out the phrase "*as the owner of a part of the banks of the San Juan River.*"

ARTICLE XVII.

First part accepted, striking out the 9th, in view of what was said in the observations on Article XV.

ARTICLE XVIII.

Admitted, changing the word *Washington* to *Managua*, it being easier to make the exchange in Nicaragua, the Government of the United States having a minister resident in Central America.

LEGATION OF NICARAGUA,
Washington, February 9, 1877.

Mr. Fish to Señor Cárdenas.

DEPARTMENT OF STATE,
Washington, February 16, 1877.

SIR: I have had the honor to receive your note of the 9th instant, repeating and amplifying remarks upon your counter-draft upon the subject of an interoceanic canal which you made during a recent conference with me.

In the interview which I had the honor to hold with you on the 8th instant, I presented the reasons and motives of this Government for the several provisions in the draft of a treaty which had been submitted, to which you had excepted, and also the objection to the

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greater part of the amendments proposed in your counter-draft, while accepting on one or two points of detail the reasonableness of your exceptions to our draft, and expressing a willingness to modify the position of this Government as to those points.

I regret to notice, from the paper now acknowledged, that your views upon the main and upon what are deemed the vital points of the question absolutely essential to the practical attainment of the result which both nations anxiously desire continue to be so contrary to those entertained on the part of the United States, that I can see no hope for the construction of the canal, or for its being undertaken, without a modification of the views presented by you. This is a result which I deplore for the interests of the United States and of Nicaragua, as well as those of commercial nations in general, and for myself personally.

The object is obviously so beneficent in its purpose that, if the work were to be completed upon an advantageous basis, it could not fail to increase the wealth and happiness of mankind. It certainly would be no dishonorable ambition for any man to have his name associated with such a scheme. It would also be affectation to deny insensibility to its failure. For its success the President was disposed again to pledge the faith of this Government to defend the neutrality of the work, as had been done in other instances touching interoceanic intercourse. In favoring the enterprise he has had an eye to nothing but its success. He was sure that this could not be compassed without a guarantee of the neutrality of the work by the chief maritime powers, and by grants from Nicaragua such as would be sufficient to tempt the cupidity and inspire the confidence of capital. It is feared that because this great natural pathway happens to lie within the jurisdiction of Nicaragua she may be disposed to be somewhat unduly sensitive in regard to her sovereignty, and to assert her technical rights in the matter in a way not only inconsistent with her own interests but with those of commercial nations generally. You will pardon me for suggesting that she seems to have undue apprehension of designs upon her sovereignty outside of the necessary limits of the canal, and does not appreciate that whatever sacrifices other powers may make to insure success to the enterprise, must be met by at least some corresponding concessions, and in a spirit of justice, not to say of generosity, on her part. She will profit more than all other nations by the construction of the canal, and yet I am forced to think that the counter-draft of the treaty is unconsciously framed upon the theory that the world desires a transit through her territory and must make all exacted submission to obtain it. It is hoped that sooner or later this policy on her part will be changed. For many years, and by separate treaties with very many of the nations of the world, Nicaragua has endeavored to enlist the support and the cooperation of other powers in the construction and the neutralization of this canal; but not a shovelful of earth has been removed toward the execution of the work.

A want of assurance as to the superiority of advantage of the route by the way of Nicaragua over other routes has, no doubt, to some extent prevented any real efforts in the direction of an actual construction of the work.

Other causes of impediment and of delay have, however, been even more operative. Among these may be mentioned the want of confidence in the terms of concession which Nicaragua might be disposed to grant

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to those who undertake the construction, and the entire uncertainty of the competence or even of the actual intent to undertake the work on the part of those to whom a concession may be granted. A concession on inadequate terms and conditions, or one granted to parties of insufficient credit or capital to perform their obligations, but who may seek the grant simply and solely (as experience shows some similar grants have been used) to speculate with, and to hawk about in the moneyed capitals of the world an offer to the best bidder, will not command the confidence of the nations whose guarantee and support are essential to the object.

In the draft of the treaty which I had the honor to submit to your consideration, the difficulty arising from this want of assurance and of confidence was sought to be obviated by obtaining the approval by several of the great maritime powers of the concession and of the grantees in advance of their assumption of the guarantee.

The policy of the separate treaties which Nicaragua has made with other powers in relation to a canal has proved utterly ineffective. The treaties are generally, if not invariably, terminable at the pleasure of either party at the end of a short number of years. The guaranteeing State is bound by its engagements only to the State of Nicaragua, which may release it, or it may release itself by a notice terminating the treaty, and one by one the powerful States may withdraw and either leave the canal without efficient guarantee, or may leave one State to maintain and defend its neutrality against all the rest.

A State conscious of power to enforce the guarantee, and with a character for good faith which leads to the performance of its engagement, must naturally look with care before entering upon a contract which may thus expose it.

It may be said that many of the powerful States have, nevertheless, entered into such treaties. It is true, but they entered into them for very limited periods; and it has been demonstrated that their united confidence in the work has not been enlisted, and the necessity of further negotiation is the result.

The United States, among others, entered into a treaty of this nature with Nicaragua for fifteen years. Nearly nine of these years have elapsed, and so inefficient has the treaty been that Nicaragua has invited another negotiation. So convinced is the United States of the entire and utter inefficiency of such treaties that little doubt is entertained that by mutual agreement those provisions of the treaty will be terminated at the earliest day.

The draft treaty submitted by the United States was framed to avoid what are believed to be radical defects in the theory of previous conventions, and to secure the confidence of the guaranteeing powers in the completion of the work by securing their approval of the terms of the concession and the character and capacity of the grantees, and by making their obligations of guarantee and the benefits of use and enjoyment identical and common.

It is not necessary here to discuss further than was done in the conversation between us the points of objection raised either to the draft of the United States or the counter-draft of Nicaragua. I will only remark that the objection raised by you, that the first article of the United States draft would exclude the States of Central and South America from participation in the use of the canal, except on the payment of double tolls, will readily be obviated. We appreciate that

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the States of Central America, and possibly the adjoining United States of Colombia, might and should be admitted to equal participation in the use of the canal with the States whose guarantees are such as to command respect from the maritime powers. It would not, however, seem just to admit States without the power to make their guarantee practically, and, if need be, physically efficient to the same degree of control with those States on whom, in case of need, the sacrifices will fall which guarantee involves and may bring.

Pursuant to your oral request, I do myself the honor to inclose a copy of certain remarks which occurred to me upon a perusal of your counter-draft, and

I avail myself of this occasion, sir, to offer to you a renewed assurance of my very high consideration.

HAMILTON FISH.

Señor Doctor Don ADAN CÁRDENAS,
&c., &c., &c.

Remarks on the counter-draft of Mr. Cárdenas.

ARTICLE I.

The stipulations proposed in this article of the counter-draft seem to be unnecessary, especially from their comprehensive character. They require the parties to propose to the other nations with which they are at peace certain obligations contained in instruments to which the United States is not a party, and some of which are not known here. It would seem to be unnecessary to expect governments of countries whose citizens or subjects might never or seldom use the canal to join in that guarantee of the neutrality of the work which would be desirable from the chief maritime powers. The treaties of Nicaragua with France and Spain, referred to in this article, are not known to this Department, which is also uncertain as to what instruments may be meant by the treaty of Managua of the 11th of February, 1860, and of the treaty of Washington of the 11th of April, 1869. It is believed that it would be preferable to omit any specification of the particular powers which may be asked to join in the guarantee of the neutrality of the canal. If application for that purpose be made to those nations most interested in navigation and commerce, and particularly in that between the two oceans, and the application be accepted, there can be no doubt that others would themselves apply as their interests might suggest. If, however, they should abstain, this might not be a material embarrassment to the success of the work.

ARTICLE II.

This article is believed to be unnecessary, because the obligations of the Clayton-Bulwer treaty, including that which provides for an invitation to other powers to join in guaranteeing the neutrality, are still subsisting. This Government has hitherto abstained from making a proposition on the subject to other powers, because there has been no prospect of a completion, or even of a commencement of the canal. Having already entered into the stipulation with Great Britain, and that still being in force, its repetition in a treaty with Nicaragua might imply a doubt of the good faith of the United States on the subject.

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Article III.

It may be regarded as questionable whether the capital necessary to construct the canal could be raised upon a charter of limited duration, even if the term should be ninety-nine years as proposed in this article.

The efficiency of the police force provided for might be thwarted by the stipulation that it shall be subject to the constitution and laws of Nicaragua. It seems clear that the work cannot be constructed unless there is a police force at hand to restrain and punish especially breaches of the peace and other offenses among the workmen. Offenders, or those likely to become such, would not probably be much deterred if they were to be carried to a distance to be tried by the courts of the country, and the proceedings would not be as summary as is desirable.

The laws of a country are frequently modified to suit the stipulations of a treaty. It is presumed that the Government of Nicaragua, if satisfied that its existing laws might obstruct work on the canal, would change them so that the impediment would be removed. This change might, in its application, be restricted to the belt within which the canal is to be constructed. Indeed, it may be said that even if the constitution of Nicaragua itself should be adverse to the prompt completion of the work, that instrument might be so modified as to change its bearing on the subject. It is presumed that Nicaragua would not be insensible either of the importance which such a work would confer upon her in the eyes of other nations, or to the increased prosperity of her material interests which must ensue.

The United States cannot undertake to guarantee the sovereignty of the Republic of Nicaragua over the whole of its present territory, especially as a condition of the stipulations upon the subject of the canal proposed in the treaty. In this respect it can go no further than to guarantee the neutrality of the canal.

Article IV.

This article is not acceptable to the United States. Although there may be no claims of citizens of the United States resulting from prior grants in respect to a canal respecting which claims this Government would officially interfere, it is not deemed expedient to join in formally renouncing the obligation to pay such claims if they should exist. It may be hoped that if such claimants should be citizens or subjects of other countries than the United States, Nicaragua would have no difficulty in carrying into effect the stipulation with which this article closes.

Article V.

It is believed that the concluding paragraph of this article of the counter-draft would be impolitic. Instead of postponing the benefits of the canal for a term of years after their accession to the treaty to such powers as may delay their accession, it is believed the most judicious course would be to require of their vessels and cargoes heavier tolls until their accession should be granted.

Article VI.

The policy suggested in regard to Article V is formally proposed in the fifth clause of this article of the counter-draft.

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Article VII.

The United States having, by adequate and expensive surveys, ascertained the practicability of the canal, cannot accept that clause of this article which allows a grantee the privilege to relinquish his grant upon the ground of the impracticability of the work.

Article IX.

It is believed that vessels intending to pass through the canal, which may have occasion to take refuge or to wait at the ports of Salinas or San Juan del Sur, should be wholly exempted from charges, instead of being liable to pay half of those usual, as this article requires.

Article XI.

It is believed that this article of the counter-draft would require at least modification enough to provide against exorbitant demands for private property which was a part of the public domain of Nicaragua at a period of ——— years prior to the date of the treaty.

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF NICARAGUA.

Whereas pursuant to certain articles of the treaty of friendship, commerce, and navigation between the United States and the Republic of Nicaragua of the 21st of June, 1867, stipulations were entered into with reference to an interoceanic canal through the territories of that Republic;

And whereas all previous efforts for the construction of any such canal have proved futile and have been abandoned and no route of communication has been constructed between the Atlantic and Pacific Oceans; and whereas it is deemed indispensable to that end that the obligations of the parties as contained in said treaty should be changed in some respects and in others extended and made more explicit, and that new efforts be made toward the commencement and completion of the work:

The President of the United States has for this purpose conferred full power on Hamilton Fish, Secretary of State, and the President of Nicaragua has conferred like power on Señor Doctor Don Adan Cárdenas, envoy entraordinary and minister plenipotentiary of that Republic at Washington.

And the said plenipotentiaries having exchanged their full powers, which were found to be in proper form, have agreed upon the following articles:

Article I.

Each of the contracting parties hereto agrees to propose severally to the principal maritime powers with which it has friendly intercourse, to accede to the terms of this convention, and to enter into the following guarantees and stipulations with reference to an interoceanic canal across the Isthmus by the way of Lake Nicaragua, viz:

First. That neither will ever obtain or maintain for itself any exclu-

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sive control over the said ship-canal, or will ever erect or maintain any fortifications commanding the same, or in the vicinity thereof, or in any form attempt to interrupt, control, or exercise exclusive dominion over the said canal, and that neither will at any time make use of any protection which either affords or may afford to any State or Government in Central America or of any alliance or influence with any such State or Government in Central America so to do, or to indirectly effect any of the said things which it agrees to refrain from.

Second. That neither will at any time use or employ, or take advantage of any influence, intimacy, alliance, or connection, with any State or Government through whose territories said canal may pass, or in any other quarter, to obtain for itself or its subjects or citizens any rights, advantages, or facilities which shall not be offered on the same terms to each of the other maritime powers acceding to this convention, and entering into the said stipulations and guarantees, and not withdrawing therefrom.

Third. That if the construction of such canal be undertaken as contemplated by this convention, the persons or company constructing the same shall be protected from the commencement thereof to its completion, from confiscation, detention, seizure, and from all violence.

Fourth. That each will use whatever influence it possesses with any State, States or Governments possessing or claiming to possess any jurisdiction or right over the territory or water which said canal shall traverse, or which shall be adjacent thereto, to facilitate the construction of such canal and to secure the general public use of the same as herein contemplated.

Fifth. That when said canal shall have been completed the same with its property shall be protected from seizure, confiscation, interruption, or injury, and the neutrality thereof and of the adjacent land and water shall be guaranteed, so that the said canal shall ever be open and free to navigation of the nations of the earth as herein provided.

Sixth. That such guarantee of neutrality so assumed shall comprise the space on the high seas within a radius of one hundred and fifty marine miles from the entrance on each side, and on the land within a line extending along and parallel to the line of the canal for a distance of five marine miles on each side thereof.

Seventh. That any power entering into such stipulations and guarantees and acceding to the terms of this convention shall be at liberty to withdraw its accession to this convention on notice duly given should it desire so to do if at the expiration of ——— years from the date of the exchange of ratifications hereof a canal shall not have been constructed and be in operation, and shall also be at liberty to withdraw from any guarantee of protection or neutrality provided the persons or company undertaking or managing the canal shall adopt or establish regulations concerning traffic through the same, contrary to the spirit and intention of this convention, either by making unfair discriminations contrary to the provisions hereof or by imposing oppressive exactions or tolls for the use thereof; provided, however, that no one nation shall withdraw the aforesaid protection and guarantee without giving six months' notice to each of the other nations having entered into similar stipulations; and provided further, that any nation so withdrawing shall not thereby become entitled to exercise belligerent rights within the radius of one hundred and fifty marine miles from either of the extremities of the canal or within five marine miles of the

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line of the same, and none shall be exercised by any power so withdrawing.

Any nation so withdrawing herefrom or from such stipulations or guarantees shall thereupon forfeit the right to the use of the canal and the adjacent waters upon the terms of advantage herein provided, and shall also forfeit such other advantages as are specially reserved to such nations as shall enter into stipulations and guarantees as herein enumerated.

Article II.

Neither of the contracting parties, nor any nation entering into such stipulations and guarantees, shall be regarded in any manner bound to recognize or satisfy any claims or supposed claims of governments, corporations, companies, or associations of individuals, which prior to the exchange of ratifications hereof may have undertaken to construct the said canal, or do any act in connection therewith.

The Government of Nicaragua, however, hereby agrees and declares that no grant or grants now exist which may hinder, delay, or embarrass the prosecution of the work under a concession to be granted as hereinafter provided, and further agrees that in case any such grant or grants shall be claimed to exist, in favor of any government, persons, or company, the same shall be removed and definitely disposed of by said Government of Nicaragua in case the same embarrass the work, or in case it may become necessary so to do.

Article III.

Every power acceding to this convention and entering into stipulations and guarantees as above provided before the commencement of the work, and not withdrawing therefrom or from this convention, shall at all times, whether in peace or war, have the right of transit through said canal when constructed, and the benefit of the neutral waters at the ends thereof for all classes of vessels entitled to fly their respective flags with the cargoes on board, on equal terms in every respect as between each other.

And all powers having been requested so to do as herein provided and acceding to this convention, and entering into the stipulations and guarantees herein provided for after the commencement of the work, and continuing to observe the same, shall, from and after the expiration of —— years from the date of such accession and entering into such stipulations and guarantees, have the same rights as to access to and passage through the said canal and all other advantages connected therewith hereby secured, as if they had originally acceded hereto and entered into such stipulations.

Article IV.

The Government of Nicaragua engages to grant to any persons or company approved by the Government of the United States, and by one or more of the other Governments who may enter into the stipulations and guarantees provided in Article I of this convention and accede to the provisions hereof, a concession for the construction of a canal, which concession must be approved as to its terms and form by the Government of the United States and by one or more of such

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other Governments referred to, and which shall provide, among other things:

1st. That the said canal, together with its approaches and appurtenances, shall be constructed and adapted to the passage of vessels of all classes not exceeding —— tons, and that said persons or company may employ such superintendents, engineers, workmen or other employés, and do all such acts and things as may be necessary for the purpose.

2d. That the merchant-vessels, yachts, and other unarmed private vessels of any power, which may before the work is begun enter into the stipulations and guarantees and accede to the conditions of this convention as herein provided, or which shall subsequently do so pursuant to Article III, shall be chargeable with one-half the tolls chargeable to vessels of other powers, and the vessels of war, and other national vessels and private armed vessels of such powers alone shall be allowed the right of transit through the canal.

3d. That the Government of the United States and each of the Governments entering into stipulations and guarantees and acceeding to the conditions of this convention, including the Government of Nicaragua, may appoint and change at pleasure from time to time two members of a board to be known as the board of control, which board shall act as advisors to and in conjunction with the board of directors of the company or the managers of the canal, and to which board of control all regulations, ordinances, or rules, whether for the use of the canal, the tolls to be paid, or any matter or thing affecting the general enjoyment and use of the canal, shall be submitted and by them be approved, provided that matters appertaining to the internal working of the company, or management as distinguished from the use and enjoyment of the canal, shall be managed by the board of directors or managers of the canal. Such board of control shall meet at such time and place, or act in such manner without actual meeting, as shall be determined from time to time. The board shall organize in such form as shall be agreed upon by those present at the first meeting, or responding, in case an actual meeting be not held, and in case from time to time any member of the board shall fail to act in the manner adopted on any subject presented, the other member or members acting shall be competent to pass on and dispose of the subject with full force and effect. Such board may at any time demand information from the directors or managers, and shall at all times have free access to all papers, books, and records of the company or management, and may require any matter comprehended within their jurisdiction to be submitted to them.

4th. That when the canal shall have been completed the Government of Nicaragua shall have the right to demand that all laborers not citizens of that Republic or of one of the guaranteeing powers, or necessary for the purpose of the canal, shall return to the place whence they may have been brought, or depart from and remain without the territory of Nicaragua.

5th. That the persons or company which may undertake the construction of the canal shall maintain an armed police within the neutral territory, but no member thereof shall pass beyond the neutral line without permission from the proper competent national authority. The Republic of Nicaragua, however, will defend the said canal and its dependencies as part of her territory to the extent of her ability.

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6th. That the rate of tolls shall be levied on gross tonnage. Should a vessel be light or in ballast, the actual displacement shall be charged for instead of gross tonnage.

The tonnage of all vessels shall be ascertained according to the Moorson system, and where any vessel shall belong to a nationality which has adopted such system and shall carry an official register or certificate of admeasurement showing her tonnage such vessel shall not be measured, but the tonnage appearing on the official document shall be taken. The amount to be charged per ton upon all vessels passing through the canal shall be fixed by the company or management, with the approval of the board of control, but no capitation tax in excess of one dollar each shall be imposed upon passengers who shall pass through the same.

7th. Should it be found necessary at any time to vary or change the stipulations and conditions of the concession, the assent must be obtained thereto of the board of control.

8th. That the concession so granted shall not be assigned or transferred without the consent of the Government of Nicaragua and of two of the other Governments entering into stipulations and guarantees as herein provided.

9th. Such canal, when constructed, with all the appurtenances and the ports and places referred to in article eight of this convention, shall be forever and at all times open as a neutral means of communication between the two oceans to all merchant vessels and yachts and to all war vessels and private armed vessels entitled under the provisions hereof to passage through the same, without any distinction, exclusion, or preference, whether of persons or nationality, on payment of the tolls fixed, and on compliance with the regulations and conditions in force at the time, subject, however, to the provisions of this treaty, and particularly to those for the benefit and advantage of such Governments as shall enter into the stipulations and guarantees herein provided for.

Article V.

From and after the date when a concession shall have been granted, as herein provided, the Government of Nicaragua shall not, and hereby agrees not, to make any other concession whatever for the construction of any canal until the company or parties holding the concession shall have declared that they consider the work impracticable, or until the term of —— years shall have expired without the work having been commenced, unless the consent of a majority of the Governments so acceding hereto and entering into such stipulations and guarantees shall have been obtained.

Article VI.

Any nation which shall enter into the stipulations and guarantees before referred to and accede to the provisions of this convention and shall not withdraw therefrom, including the Government of Nicaragua, shall have the same rights, privileges, and facilities in regard to transit in and through the said canal, and the use of the ports and approaches thereto; and no advantage or favor shall be accorded to the vessels of any nation, being one of the guaranteeing Governments, over the vessels of any other nation entering into the stipulations and guarantees herein referred to and acceding hereto, and not withdrawing therefrom.

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ARTICLE VII.

The Government of Nicaragua, on its part, assumes the stipulations and guarantees contained in Article I in addition to the obligations of a contracting party to the other articles of this convention.

ARTICLE VIII.

For the purpose of securing the construction of the said interoceanic canal the Government of Nicaragua agrees to allow two free ports, one at each extremity of the canal on both oceans. The cost of maintaining the police and of other public expenses at the said ports shall be at the charge of the Government of Nicaragua.

The Government of Nicaragua further agrees that the ports of San Juan del Sur and Salenas, on the west coast, may be used as harbors of refuge and repose by vessels awaiting and entitled to transit through the canal, or having passed through the same, and that all such vessels shall be free from all imposts or charges of any kind whatever.

ARTICLE IX.

The Government of Nicaragua further agrees that it will not impose any national duties or imposts, or permit to be imposed any taxes, duties, or other contributions of any kind, except such as are by this treaty provided for, upon the canal, the ships traversing it, or upon the passengers, merchandise, or property on board of the same, or upon the capital stock of the corporation, company, or association undertaking the work, or the tugs, warehouses, wharves, machinery, or other works or property of the said corporation, company, or individuals, or pertaining thereto, which may be necessary to the service of the canal during the existence of this concession.

And the Government of Nicaragua further agrees that the cargo of no vessel complying with the regulations in force while in transit through the canal shall be molested or subject to examination, and that the mails and correspondence of all countries shall pass through without charge.

ARTICLE X.

And the Government of Nicaragua agrees to admit, free of duty, imposts, or contributions of any kind, all machinery, tools, appliances and material of every description to be employed in the construction of the canal and of the dams, buildings, and other works pertaining thereto, and also all provisions, stores, and clothing for the officers, overseers, and other persons actually employed in or about such construction, or in the protection thereof.

ARTICLE XI.

The Government of Nicaragua further stipulates to grant and does hereby grant to the corporation, company, or individuals undertaking the construction of the canal the privilege of carrying thither laborers of all kinds, without any payment therefor, and does hereby grant and set apart, without compensation, for the work of the canal and its dependencies, all the national or public territory, including the sea and

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tributary waters, which may be necessary for locating, constructing, feeding, and furnishing the canal or waste outlets thereof, or its appurtenances, and for places for the deposit of excavated matter; and further grants the power to take and condemn all lands and other property owned by private individuals in like manner necessary therefor, making full compensation therefor, and following the laws in force in Nicaragua; but in determining the amount of compensation no enhanced value from the anticipated opening of the canal shall be taken into account. And the Government of Nicaragua further agrees to permit the purchase of material at fair valuation when found within Nicaraguan territory belonging to private parties; and when the said material shall be found on what at the date of this convention is the public domain, or what belongs to the Government, to grant the same or the use thereof gratuitously. The company shall also have the right to deposit material which may be excavated on the same conditions as to obtain material for the construction of the work.

Article XII.

As soon as the canal, its dependencies, and appurtenances, shall be completed, the entire possession, inspection, direction, and management of the same shall be exercised by the persons or company controlling the same, without any interference from any source, other than as herein contemplated, but without any right of jurisdiction over the territory or its inhabitants. The Government of Nicaragua shall retain its political sovereignty and jurisdiction over the canal and adjacent territory, but will not only permit, but does hereby guarantee, in conformity with the constitution and laws of Nicaragua, the peaceable and undisturbed enjoyment, administration, direction, and management of the canal, as already stated.

Article XIII.

Each of the Governments which shall enter into the stipulations and guarantees before referred to and accede to this convention shall have power to erect and maintain yards and docks for the repair and supply of their ships at the harbors at each end of the canal, and to maintain within the limits of such yards and docks a sufficient police force to protect the property within the same, not exceeding, however, the force actually required for the purpose.

Article XIV.

Should differences arise between any of the several powers entering into the stipulations and guarantees herein referred to and the persons or company controlling said canal concerning any matter or thing connected with the management, use, or enjoyment thereof, or between the said persons or company and the State of Nicaragua, as to any question affecting the canal in any manner, or any matter connected therewith, the same shall be referred for decision to the board of control, whose decision thereon shall be final.

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Article XV.

The United States engages to assume the stipulations and guarantees contained in article 1 of this treaty whenever three or more of the principal European maritime powers to which the United States may have proposed the same shall have agreed to accede thereto and shall have entered into such stipulations and guarantees.

Article XVI.

Each of the contracting parties engages to employ its good offices with that of Costa Rica, in order that it may accede to those stipulations of this treaty which affect her as holding a portion of the bank of the river San Juan, in case that the question pending between Costa Rica and Nicaragua as to limits under the treaty of 1858 be decided in her favor. And the Government of the United States, being actuated by the desire that the question of limits between the two Republics may form no obstacle to the accomplishment of the work in question, pledges itself to use its good offices with the Government of Costa Rica, to the end that the aforesaid questions may be settled by the arbitration of one or more impartial Governments.

Article XVII.

If at the end of ——— years from the date of this convention a canal shall not have been constructed and be in operation it shall be competent for either party hereto, on notice to the other, to terminate the same.

From and after the date when any concession shall be granted, as herein provided, and so long as the same shall continue in force, the Government of the United States and the Government of Nicaragua reciprocally renounce all benefits or advantages provided for in articles 14 to 19, inclusive, of the treaty between the two countries of June 20, 1868, and agree that such articles shall not be operative.

Article XVIII.

The present convention shall be ratified, and the ratifications exchanged at the city of Washington within eighteen months from the date hereof, or earlier, if possible.

12.—ARTICLE 14 OF TREATY OF JULY 4, 1864, BETWEEN THE UNITED STATES AND HONDURAS. CLAY-COLINDRES.

Article XIV.

Inasmuch as a contract was entered into by the Government of Honduras and a company entitled the "Honduras Interoceanic Railway Company" for the construction of a railway from the Atlantic to the Pacific Oceans, through the territories of Honduras, which contract was ratified by the constitutional powers of the State, and proclaimed as a law on the 28th day of April, 1854; and inasmuch as, by the terms

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of article 5, section 6, of said contract, the Government of Honduras, with "the view to secure the route herein contemplated from all interruption and disturbance from any cause, or under any circumstances, engages to open negotiations with the various Governments with which it may have relations for their separate recognition of the perpetual neutrality, and for the protection of the aforesaid route"; therefore, to carry out the obligations thus incurred:

1. The Government of Honduras agrees that the right of way or transit over such route or road, or any other that may be constructed within its territories, from sea to sea, shall be at all times open and free to the Government and citizens of the United States for all lawful purposes whatever. No tolls, duties, or charges of any kind shall be imposed by the Government of Honduras on the transit of property belonging to the Government of the United States, or on the public mails sent under authority of the same, nor on the citizens of the United States. And all lawful produce, manufactures, merchandise, or other property belonging to citizens of the United States, passing from one ocean to the other, in either direction, shall be subject to no import or export duties whatever, nor to any discriminating tolls or charges for conveyance or transit, on any such route or road as aforesaid, and shall be secure and protected from all interruption or detention on the part of the State. The Republic of Honduras further agrees that any other privilege or advantage, commercial or other, which is or may be granted to the subjects or citizens of any other country in regard to such route or road as aforesaid, shall also, and at the same time, be extended to citizens of the United States; and finally, as an evidence of its disposition to accord to the travel and commerce of the world all the advantages resulting from its position in respect to the two great oceans, Honduras, of her own good will, engages to establish the ports at the extremities of the contemplated road as free ports for all the purposes of commerce and trade.

2. In consideration of these concessions, in order to secure the construction and permanence of the route or road herein contemplated, and also to secure, for the benefit of mankind, the uninterrupted advantages of such communication from sea to sea, the United States recognizes the rights of sovereignty and property of Honduras in and over the line of said road, and for the same reason guarantees positively and efficaciously the entire neutrality of the same, so long as the United States shall enjoy the privileges conceded to it in the preceding section of this article. And when the proposed road shall have been completed the United States equally engages, in conjunction with Honduras, to protect the same from interruption, seizure, or unjust confiscation, from whatsoever quarter the attempt may proceed.

3. Nevertheless, the United States, in according its protection to the said route or road, and guaranteeing its neutrality and security when completed, always understand that this protection and guarantee are granted conditionally, and may be withdrawn if the United States should deem that the persons or company undertaking or managing the same adopt or establish such regulations concerning the traffic thereupon as are contrary to the spirit and intention of this article, either by making unfair discriminations in favor of the commerce of any nation or nations over the commerce of any other nation or nations, or by imposing oppressive exactions or unreasonable tolls upon passengers, vessels, goods, wares, merchandise, or other articles. The afore-

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said protection and guarantee shall not, however, be withdrawn by the United States without first giving six months' notice to the Republic of Honduras.

WASHINGTON, *May 31, 1857.*

SIR: The disorders which occurred upon the Panama Railway in the month of April, 1856, have not only prompted demands on the part of the British Government, as well as that of the United States, for reparation on behalf of their subjects, but have impressed upon Her Majesty's ministers the expediency of embracing, in concert with other states, such general engagements as may afford to the interests and parties concerned a greater measure of safety in future.

It is not necessary for me to enlarge upon the importance of the interoceanic transit to all the maritime powers. It is obvious that a communication which has become of vital necessity to the commerce of the world cannot be entirely abandoned without stipulation or security, to the disposal of one Government, such as that which possesses sovereign rights over the territory in question.

The cabinet of New Granada requires the counsels and the support of those whose wisdom and whose power enable them to regulate a matter which involves a universal interest, and excites, at present, a constant apprehension. The Government of the United States and Great Britain are most directly concerned in the common pathway of trade, emigration, and intelligence.

Designed in the first instance by the enterprise of American citizens, and administered by a company formed in the United States, the railway of Panama has been largely supported by the resources of Great Britain, both in the original stock and still more in the bonds which were subsequently issued. The participation of English capital in this work is at present estimated to be about $3,000,000, which may at any moment be increased in the constant circulation and transfer of these securities. In addition to this legitimate source of solicitude for the preservation of the route, Her Majesty's Government have a more direct motive in their friendly intervention for the same purpose, in the fact that the Panama Railroad is at present the only way open to the Pacific dominions of Her Majesty, which may shortly undergo a change of government, and which are undoubtedly destined hereafter to become the seat of a great community of English settlers. With such a stake in the maintenance of the transit, you will not be surprised to learn that I am directed by the Earl of Clarendon to ascertain the views of the Government of the United States with reference to an eventual settlement of this question.

The moment may not yet be thought propitious to negotiate with New Granada, but the altered disposition of that Government may justify an expectation that the claims of the United States and Great Britain will shortly be acknowledged and satisfied, and the two Governments may find it consistent with their interests to make a timely exchange of their sentiments in relation to the future.

I am, consequently, instructed to inquire whether the United States Government is disposed to agree to a general guarantee on the part of the powers interested in the passage of the isthmus by which the neutrality of the Panama route and its freedom to all nations would be

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secured. I learn from Mr. de Sartiges that the expediency of such a measure was brought under his notice by Mr. Marcy in the autumn of last year, and was the subject of a communication to the Government of France. Should the present Government sanction the overture of the late Secretary of State, and continue in the same opinion, it will give me great satisfaction to be the channel of your views with reference to the form and manner in which the object of our common wishes may be carried into effect.

I have, sir, NAPIER.

[Inclosure No. 13—2.]

Lord Napier to Mr. Cass.

HER BRITANNIC MAJESTY'S LEGATION,
Washington, D. C., August 24, 1857.

SIR: I had the honor on the 31st May last to convey to you the desire of Her Majesty's Government to take, in common with the United States, some engagements for the neutrality of the Isthmus of Panama and the security of the transit route. Considering the unsatisfactory character of the relations which have meanwhile prevailed between the Cabinets of Washington and Bogota, I am not surprised that this overture has hitherto remained without any official reply on your part. The instructions and the powers which have recently been placed in the hands of General Herran justify me in believing that the matters under discussion between the two Governments will find an amicable adjustment, and I am prompted by the presence and the communications of that minister to bring this subject again under your consideration.

General Herran is charged to inform you of the desire of his Government to negotiate a convention with the United States, Great Britain, and France, if the Imperial Government be so disposed, with a view to establishing on a broad and permanent basis the freedom and neutrality of the territory and transit of Panama.

Her Majesty's Government are aware that by the treaty of 1846 the Government of the United States has, in consideration of certain advantages, and for a limited period, guaranteed that neutrality and secured to New Granada the rights of sovereignty and property which it possesses in the interoceanic territory. I have not been informed of the precise shape in which Her Majesty's Government desire to consign the engagements, of which the general object is indicated above, but I do not doubt that they would willingly adopt the terms of the treaty of 1846 as the basis of a new common arrangement, giving to those terms such expansion in reference to the franchises of transit and the duration of the guarantee as the United States and New Granada might deem desirable. The guarantee of the United States is indeed a powerful support to the Government of New Granada and a discouragement to those, if such there be, who aim at the dismemberment of that confederation, but the combination of America and England for the same object, or that of the maritime powers in general, would no doubt establish a higher degree of confidence and render any measures which it might be necessary to embrace hereafter for the peace of the isthmus more easy to the con-

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tracting parties, more agreeable to New Granada, and more satisfactory to the commercial interests of the world.

I have, sir,

NAPIER.

[Inclosure No. 13—3.]

Mr. Cass to Lord Napier.

DEPARTMENT OF STATE,
Washington, September 10, 1857.

MY LORD: The proposition in your lordship's letter of the 24th ultimo for a joint convention between the United States, England, and France, for the purpose of securing the freedom and neutrality of the transit route over the Isthmus of Panama, has been submitted to the President, and I am now instructed to communicate to you his views concerning it.

The President fully appreciates the importance of that route to the commercial nations of the world, and the great advantage which must result from its entire security, both in peace and war, but he does not perceive that any new guarantee is necessary for this purpose on the part of the United States.

By the treaty concluded with New Granada on the 12th of December, 1846, to which your lordship has referred, this Government guaranteed for twenty years the neutrality of the isthmus, and also the rights of sovereignty and property over it of New Granada. A similar measure on the part of England and France would give additional security to the transit, and would be regarded favorably, therefore, by this Government. But any participation by the United States in such a measure is rendered unnecessary by the arrangement already referred to, and which still remains in full force. It would be inconsistent, moreover, with the established policy of this country to enter into a joint alliance with other powers, as proposed in your lordship's note.

The President is fully sensible, however, of the deep interest which must be felt by all commercial nations, not only in the Panama transit route, but in the opening of all the various passages across the isthmus, by which union of the two oceans may be practically effected. The progress already effected in these works has opened a new era in the intercourse of the world, and we are yet only at the commencement of their results.

It is important that they should be kept free from the danger of interruption, either by the governments through whose territories they pass or by the hostile operations of other countries engaged in war.

While the rights of sovereignty of the local governments must always be respected, other rights also have arisen in the progress of events involving interests of great magnitude to the commercial world, and demanding its careful attention, and, if need be, its efficient protection. In view of these interests, and after having invited capital and enterprise from other countries to aid in the opening of these great highways of nations under pledges of free transit to all desiring it, it can not be permitted that these governments should exercise over them an arbitrary and unlimited control, and close them or embarrass them without reference to the wants of commerce or the intercourse of the

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world. Equally disastrous would it be to leave them at the mercy of every nation which, in time of war, might find it advantageous, for hostile purposes, to take possession of them and either restrain their use or suspend it altogether.

The President hopes that by the general consent of the maritime powers all such difficulties may be prevented, and the interoceanic lines, with the harbors of immediate approach to them, may be secured beyond interruption to the great purposes for which they were established.

I have, &c., LEWIS CASS.

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[Senate Ex. Doc. No. 194, Forty-seventh Congress, first session.]

THE CLAYTON-BULWER TREATY AND THE MONROE DOCTRINE.

A letter from the Secretary of State to the minister of the United States at London, dated May 8, 1882, with sundry papers and documents explanatory of the same, selected from the archives of the Department of State.

Message from the President of the United States, transmitting, in response to the Senate resolution of the 15th of July, 1882, a report of the Secretary of State and accompanying papers relating to the Clayton-Bulwer treaty.

AUGUST 3, 1882.—Read and referred to the Committee on Foreign Relations.
AUGUST 4, 1882.—Ordered printed.

To the Senate of the United States:

I transmit herewith, in response to the Senate resolution of the 15th instant, a report of the Secretary of State and accompanying papers relating to the Clayton-Bulwer treaty.

CHESTER A. ARTHUR.

EXECUTIVE MANSION,
Washington, July 29, 1882.

To the President:

The Secretary of State, to whom was referred the resolution of the Senate of the 15th instant, requesting the President, "if not incompatible with the public interest, to furnish the Senate with copies of the declaration of Sir Henry Lytton Bulwer and Mr. Clayton on the exchange of the ratifications of the Clayton-Bulwer treaty on the 4th day of July, 1850, and any other documents referred to in the instruction of Mr. Frelinghuysen to Mr. Lowell dated the 8th day of May, 1882," has the honor to lay before the President, for transmission to the Senate in response to the resolution, the accompanying copy of the declaration of Sir Henry Bulwer and Mr. Clayton described therein, together with a selection of such other documents cited in the instruction of May 8 to Mr. Lowell as seem to come within the purview of the resolution.

Respectfully submitted.

FRED'K T. FRELINGHUYSEN.

DEPARTMENT OF STATE,
Washington, July 29, 1882.

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NOTE.

Mr. Frelinghuysen to Mr. Lowell.

No. 368.] DEPARTMENT OF STATE,
Washington, D. C., May 8, 1882.

SIR: Mr. Sackville West has handed me copies of two dispatches from Lord Granville to him respecting the Clayton-Bulwer treaty; the first, dated 7th January last, comments upon Mr. Blaine's 270 of the 19th of November; the second, of the 14th January, comments upon Mr. Blaine's 281 of the 29th November.

They have been read with interest and with attention. After careful consideration, the President is not without hope that the views of the two Governments may be harmonized in this matter. He therefore directs me to communicate to you, somewhat at length, the opinions entertained here respecting the traditional continental policy of the United States and the Clayton-Bulwer treaty.

A canal across the Isthmus for vessels of all dimensions and every character, under possible conditions hereinafter referred to, would affect this Republic in its trade and commerce; would expose our Western coast to attack; destroy our isolation; oblige us to improve our defenses and to increase our Navy, and possibly compel us, contrary to our traditions, to take an active interest in the affairs of European nations. The United States, with their large and increasing population and wealth, can not be uninterested in a change in the physical conformation of this hemisphere which may injuriously affect either the material or political interests of the Republic, and naturally seek that the severance of the Isthmus connecting the continents shall be effected in harmony with those interests. This Government, while believing that the Isthmus should not be severed so as to do unnecessary injury to the United States, at the same time appreciates the desire of Great Britain that she should be able, by a short and easy passage from ocean to ocean, to reach her eastern and American possessions on the Pacific, and that other nations of the world have a similar interest in such a passage. There is, however, no necessary conflict between the political claims of the United States in this matter and the material interests of other nations.

A canal across the Isthmus can be created, and under the protectorate of the United States and the Republic whose territory it may cross, can be freely used by all nations; thus in some degree would be continued to the United States the benefit of that conformation of the earth which is now an element of security and defense.

For thirty years the Panama Railroad has been maintained without other protection than that of the United States and the local sovereign, in accordance with the treaty of 1846 with New Granada.

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During that period Great Britain has carried to a successful result the wars of the Crimea and the Indian mutiny; France has three times convulsed Europe with strife; a conflict between Russia and Turkey has changed the face of the Ottoman Empire; thrones have crumbled; empires have been constructed; republics have arisen, while on this continent the most remarkable civil war in history has occurred, and at the same time the Emperor of the French was lending his active support to an aspirant for imperial honors in the neighboring Republic of Mexico. Within that period almost every form of war and strife have taken place that would seem to make especially necessary the neutralization of the Isthmus, and yet the trains of the Panama Railroad have run from ocean to ocean peacefully and with no other interruption than what has come from the rare turbulence of the local population.

During the same time another isthmus has been pierced, and while wars have raged within sight of the Mediterranean port the peaceful commerce of the world has moved through the Suez Canal quietly and safely under no international protectorate.

If no guarantee or protectorate has been found necessary during such troubled times, it can scarcely be required in the more peaceful period which both the Government of the United States and that of Great Britain hope and strive for.

The President, therefore, considers it unnecessary and unwise, through an invitation to the nations of the earth, to guarantee the neutrality of the transit of the Isthmus, or to give their navies a pretext for assembling in waters contiguous to our shores, and to possibly involve this Republic in conflicts from which its natural position entitles it to be relieved.

It will doubtless occur to Lord Granville, as it does to us, that international agreements of this kind calling for interference by force, and conferring joint rights upon several independent powers, are calculated to breed dissension and trouble. In times of peace, when there is no call for their exercise, they are harmless though useless. But when wars and trouble come, it too frequently happens that differences arise, and so at the very moment when the agreement should be enforced it is impossible to enforce it; and such agreements would lead to that political intervention in American affairs which the traditional policy of the United States makes it impossible that the President should either consent to or look upon with indifference.

The President believes that the formation of a protectorate by European nations over the isthmus transit would be in conflict with a doctrine which has been for many years asserted by the United States. This sentiment is properly termed a doctrine, as it has no prescribed sanction and its assertion is left to the exigency which may invoke it. It has been repeatedly announced by the Executive Department of this Government, and through the utterances of distinguished citizens; it is cherished by the American people, and has been approved by the Government of Great Britain.

It is not the inhospitable principle which it is sometimes charged with being and which asserts that European nations shall not retain dominion on this hemisphere and that none but republican governments shall here be tolerated; for we well know that a large part of the North American continent is under the dominion of Her Majesty's Government, and that the United States were in the past the first to recognize the imperial authority of Dom Pedro in Brazil and of Iturbide in

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Mexico. It is not necessary now to define that doctrine, but its history clearly shows that it at least opposes any intervention by European nations in the political affairs of American republics.

In 1823 Mr. Canning, with the concurrence of the cabinet of London, informed Mr. Rush that Great Britain could not see with indifference the intervention of foreign power in Spanish America, or the transfer to those powers of any of the colonies, and suggested a joint declaration to that effect by the United States and Great Britain. This suggestion grew out of the relations then existing between France and Spain, their attitude towards the South American republics then struggling for independence, and the injuries to the colonies and commerce of Great Britain which would result from a successful prosecution of the policy of those two Governments. President Monroe did not adopt the proposal for a joint declaration; but in his message of December 2, 1823, after stating that it was our policy not to interfere with the internal concerns of European powers, speaking of the war which the revolted colonies were carrying on against Spain, and of contemplated interference by the "Holy Alliance" in behalf of the latter, said, in language which has gone into history under his name, thus:

> But in regard to these continents circumstances are eminently and conspicuously different. It is impossible that the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness, nor can any one believe that our southern brethren, if left to themselves, would adopt it of their own accord. It is equally impossible, therefore, that we should behold such interposition in any form with indifference.

This sentiment was received in England with enthusiasm. Mr. Brougham said:

> The question in regard to Spanish America is now, I believe, disposed of or nearly so; for an event has recently happened than which none has ever dispensed greater joy, exultation, and gratitude over all the freedmen of Europe; that event which is decisive on the subject is the language held with respect to Spanish America in the message of the President of the United States.

Sir James Mackintosh said:

> This evidence of the two great English commonwealths (for so I delight to call them, and I heartily pray that they may be forever united in the cause of justice and liberty) cannot be contemplated without the greatest pleasure by every enlightened citizen of the earth.

Mr. John Quincy Adams, who well knew what had led to these statements by Mr. Monroe, explained in a message to the House of Representatives on the 17th day of March, 1826, that there was no purpose of interfering with the existing European colonies in America; that the language was only a frank declaration that the United States could not look with indifference either upon an attempt by colonization to close any port of the continent against the commerce of the United States or upon concerted political interference from Europe in American affairs.

Thus the doctrine of non-intervention by European powers in American affairs arose from complications in South America, and was announced by Mr. Monroe on the suggestion of the official representative of Great Britain.

The doctrine so formulated by Monroe and expounded by Adams has since remained a cardinal principle of our continental policy. In several notable instances, especially in the case of the French attempt to set up imperial authority in Mexico, it guided our political action, and it is to-day firmly embedded in the American heart.

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It is true that this doctrine refers to the political and not to the material interest of America; but no one can deny that to place the isthmus under the protection and guarantee of the powers of Europe, rather than under the protection of the leading power of this hemisphere, would seriously threaten and affect the political interest of that power.

It is not to be anticipated that Great Britain will controvert an international doctrine, which she suggested to the United States, when looking to her own interest, and which, when adopted by this Republic, she highly approved; and it is but frank to say that the people of this country would be as unwilling that the pathway of commerce between the Pacific coast and our Eastern market should be under the dominion of the allied European powers as would be the people of Great Britain that the transit from one to another part of her possessions should be under such control.

Prior to the war of the Revolution, Great Britain had acquired strong positions from Halifax to Antigua, dominating the coast of the United States. She retained these positions after the peace of 1783, and continues to use them for offensive and defensive purposes. She has strengthened old strongholds and made new ones, while the United States has ever refused to avail herself of proffered commanding external military stations.

No well-informed statesman doubts the ability of this nation to raise a powerful navy. To raise such a navy might bring commercial advantages to the United States, but it is doubtful whether it would promote the peace of the world; and the United States desires that their citizens may, without any armed assertion of right, be conveyed by water transit from their western to their eastern shores without passing under the guns of European powers.

These are our own views, and it is but frank to state them, while Her Majesty's Government is not called upon either to admit or deny them.

To considerations such as these Lord Granville, in his dispatch of November 10, 1881, answers that the position of Great Britain and the United States, in reference to the canal, is determined by the—

engagements entered into by them respectively in the convention, which was signed at Washington on the 19th of April, 1850, commonly known as the Clayton-Bulwer treaty, and that Her Majesty's Government rely with confidence upon the observance of all the engagements of that treaty.

We are thus fairly brought to the consideration of the Clayton-Bulwer treaty.

The treaty relates to communication between the oceans, and divides itself into two parts:

First, and principally, that which the treaty terms a "particular object," to wit, a then projected interoceanic canal in Central America by the Nicaragua route; and this is the only object stated in the preamble of the treaty, which says that the two Governments, "being desirous of consolidating the relations of amity which so happily subsist between them, by setting forth and fixing in a convention their views and intentions with reference to any means of communication by ship canal which may be constructed between the Atlantic and Pacific oceans by the way of the river San Juan de Nicaragua and either or both of the lakes of Nicaragua or Managua to any port or place on the Pacific Ocean," to that end confer full powers on Mr. Clayton and Sir Henry Bulwer.

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The first and principal object of the treaty is considered in the first seven articles.

Second. The subordinate object of the treaty is that treated of in the remaining or eighth article, which states that the two Governments "having not only desired, in entering into this convention, to accomplish a *particular object*, but also to establish a general principle (and this is the principle), hereby agree to extend their protection by treaty stipulation to any other practicable communication" across the isthmus, "and especially to the interoceanic communications, should the same prove practicable, whether by canal or railroad, which are now proposed to be established by the way of Tehuantepec or Panama." This "general principle" or joint protection is to be effected, as stated, "by treaty stipulations."

Although this discussion relates to a canal by the Panama route outside of Central America, to which the eighth article refers, yet your attention is invited as well to the first and principal as to the second and subordinate purpose of the treaty.

First. While the primary object of the treaty, as will be seen, was to aid the immediate construction of a canal by what is known as the Nicaragua route it is equally plain that another and important object, which the United States had in view, was to dispossess Great Britain of settlements in Central America, whether under cover of Indian sovereignty or otherwise. The United States were tenacious that Great Britain should not extend further her occupation of threatening military or naval strategic points along their maritime frontier. To assure this, the parties to the treaty jointly agreed not to exercise dominion over, or fortify or colonize Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America. Great Britain, however, exercises dominion over Belize or British Honduras, the area of which is equal to that of Massachusetts, Connecticut, and Rhode Island, and the impression prevails that since the conclusion of the treaty of 1850, the English inhabitants of that district have spread into the territory of the neighboring Republics and now occupy a large area of land which, under the convention, belongs to one or the other of the two Republics, but over which the Government of Her Majesty assumes to exercise control.

Such dominion seems to be inconsistent with that provision of the treaty which prohibits the exercise of dominion by Great Britain over any part of Central America. This makes it proper for me to say that the English privileges, at the time of the conclusion of the Clayton-Bulwer treaty, in what has been known as the Belize, were confined to a right to cut wood and establish sawmills in a territory defined by metes and bounds. These privileges were conferred by treaties, in which Spanish sovereignty was recognized. On the successful revolution, the rights of Spain vested in the new Republics, and had not been materially changed when the Clayton-Bulwer treaty was concluded. That treaty was concluded April 19, and its ratification advised by the Senate May 22, 1850. On the exchange of the ratifications, Sir Henry Bulwer filed in this Department, under date of June 29, 1850, a declaration that the exchange was made with the understanding on the part of Her Majesty's Government that the treaty did not apply to Her Majesty's *settlement* at Honduras and its dependencies. Mr. Clayton answered, under date of July 4, 1850, that he so understood, but that he must not be understood to either affirm or deny British title therein.

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It is to be observed that each of these declarations was made after the conclusion of the treaty by the joint action of the President and the Senate, and that the declaration was not made to or accepted by them. In 1859 Great Britain entered into a treaty with Guatemala, in which what had been called the *settlement* in the declaration made on the exchange of the ratification of the Clayton-Bulwer treaty was styled "Her Britannic Majesty's settlement and possessions."

In the treaty with Guatemala the boundaries were defined, and it was agreed that all on one side of the defined boundaries "belongs to Her Britannic Majesty." It is further understood that when the commissioners met to mark the boundary in accordance with the agreement, it was found that the subjects of Great Britain had occupied so much more of Guatemala than was supposed that the commissioner on the part of Her Majesty's Government refused to proceed, and this large area of land has since remained practically in the possession of Great Britain.

The United States have never given their assent to this conversion of the British "settlement" in Central America under Spanish-American sovereignty into a British "possession" with British sovereignty. There is a vast difference between a settlement subject to the sovereignty of the Central-American Republic and a colony controlled by Great Britain.

Under the treaty of 1850, while it is binding, the United States have not the right to exercise dominion over or to colonize one foot of territory in Central America. Great Britain is under the same rigid restriction. And if Great Britain has violated and continues to violate that provision, the treaty is, of course, voidable at the pleasure of the United States.

Again, it is well known that the parties to the Clayton-Bulwer treaty anticipated that a canal by the Nicaragua route was to be at once commenced. Under the assumption of a protectorate of Mosquito, British authority was at that time in actual and visible occupation of one end of the Nicaragua route, whether with or without title is not now material, and it was intended by this treaty to dispossess Great Britain of this occupation. This object was accomplished in 1859 and 1860 by treaties between Great Britain, Guatemala, Honduras, and Nicaragua, referred to in Lord Granville's dispatch of January 14, 1882. It was to this adjustment, which was one of the prime objects of the treaty, and not to the colonization of British Honduras, that Mr. Buchanan in his message of December 3, 1860, alludes as "an amicable and honorable adjustment of dangerous questions arising from the Clayton-Bulwer treaty."

When the Clayton-Bulwer treaty was concluded it was contemplated that the Nicaragua Canal, to which the treaty principally had relation, would be at once commenced and finished with all possible speed by American and British capital under the impulse of the joint protectorate. This appears not only from the context of the treaty, but also from the history of the negotiations which lead to the treaty, and the relations which then existed between this Government and the Central American States.

On December 12, 1846, New Grenada, by a treaty of commerce, in consideration of certain guarantees, made the United States valuable grants relating to the Panama route, to which your attention will be directed when we consider the rights of this Republic in relation to the Panama route.

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The discovery of gold in California soon made it important to find some rapid way of reaching it. Notwithstanding the progress of the Panama Railroad scheme, public feeling was running strongly in favor of a ship-canal large enough to accommodate ocean steamships. Influenced by this strong feeling the minister of the United States in Nicaragua, without instructions, negotiated a treaty with that Republic, which conferred upon certain citizens of the United States the valuable right to construct a ship-canal from San Juan on the Atlantic coast to the Pacific. Nicaragua claimed sovereignty over the whole of the line of the proposed canal, while Great Britain, as I have shown, claimed sovereignty over a portion of it occupied by the Mosquito Indians.

At the time of the concession by Nicaragua it would have been impossible to procure in the United States the capital necessary for the construction of a ship-canal from the Atlantic to the Pacific.

Hence it was that, when Mr. Clayton learned of the concession, he at once informed Mr. Crampton, the British minister, saying that the United States did not propose to avail themselves exclusively of these privileges, but wished a canal constructed, and that the claim of Great Britain on behalf of the Mosquito Indians, which the United States could not admit, stood in the way. The Government of the United States, Mr. Clayton said, was persuaded that—

> These considerations, if fairly laid before Her Majesty's Government, would induce Her Majesty's Government to make such an arrangement with regard to the Mosquito Indians as would prevent its being an obstacle to the design in question.

President Taylor was present at the interview, and "cordially concurred." Mr. Crampton reported the conversation to Lord Palmerston the 1st October, and on the 15th of the same month transmitted to him a copy of the concession by Nicaragua to the American company. The 22d November Mr. Abbott Lawrence officially informed Lord Palmerston that an American company, aided by the subscription of a large amount of British capital, had begun to construct the Panama Railroad, and had completed the contracts for iron for it. He transmitted to Lord Palmerston a copy of the guaranty in the treaty of 1846 with New Grenada, and invited Great Britain to join in the guaranty. In the same note he acquainted her Majesty's Government with the concession from Nicaragua to the American canal company, and said that the conflicting claims as to Mosquito threw an obstacle in the way of the work, and invited a conversation on the subject. It seems that several conversations were had, since on the 14th of the following December Mr. Lawrence addressed a formal note to Lord Palmerston, in which, after referring to them and again setting forth the concessions for the Panama Railroad and the Nicaragua Canal, and stating that the United States had "disclaimed all intention to settle, annex, colonize, or fortify the territory of Central America, which declaration had been met by a similar disclaimer on the part of Great Britain," and also that Her Majesty's Government "had intimated their willingness to join with the United States in their guaranty of neutrality," he asked, in substance, 1st. Whether Great Britain would enter into a treaty with Nicaragua similar to that negotiated by the United States? 2d. Whether Great Britain would enter into a treaty with New Grenada guaranteeing the neutrality of the railway then under construction. 3d. Whether the obstruction of the Mosquito Protectorate would be removed? This note was never answered formally in London, but negotiations were transferred to Washington.

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Meantime, and in the autumn of 1849, Sir Henry Bulwer had succeeded Mr. Crampton in Washington, and, soon after his arrival, commenced negotiations with Mr. Clayton for a treaty for the protection of a canal.

On the 6th of January, 1850, Sir Henry Bulwer wrote to Lord Palmerston, saying:

Your lordship is aware that the main interest of the United States in this matter has arisen from its newly acquired possession in the Pacific, and the project of an American company to form a water communication between the two oceans, passing through the lake of Nicaragua and the river San Juan, this company having obtained from the state of Nicaragua the use of its lakes and territory for this purpose, and the use also of the river San Juan, to which Nicaragua lays claim. * * * But it so happens that while it is very difficult, not to say impossible, for Her Majesty's Government to listen to those claims of Nicaragua, our decision with respect to which has been already openly taken, there is no difficulty, I believe, whatsoever in Her Majesty's Government assisting the United States in its general views with respect to that water communication across Central America which Great Britain must be almost as desirous as the United States to see established. * * * I am disposed to think that the best way of doing this is by a convention between Great Britain and the United States.

Negotiations conducted on this basis progressed so rapidly that on the 3d February, 1850, Sir Henry Bulwer was able to transmit for Lord Palmerston's criticism the full project of a treaty. Extracts from the covering dispatch fully explain what the treaty was intended to accomplish.

The State of Nicaragua made to an American company, formed for the construction of such a canal, the grant, accompanied by various favors and privileges, of all such portion of the territory claimed by it as the said company require. * * * It was, however, impossible for the contemplated scheme to be executed under any grant from the State of Nicaragua as long as the mouth of the San Juan River was in the hands of another people protected by Great Britain. * * * Both the American company to which I have alluded and the American Government have latterly manifested an earnest desire to have it clearly understood that they will modify all that portion of their original engagement with Nicaragua which secures any advantages to one State which another may not equally enjoy; and if such be the spirit which is to preside over the vast project under consideration, Great Britain has not only no interest in preventing its success, but every interest in forwarding its completion and providing for its security. * * * It is with such views that the inclosed convention has been drawn up, its object being to exclude all question of the disputes between the Nicaragua and the Mosquitos, but to settle, in fact, all that it was essential to settle with regard to these disputes as far as the ship communication between the Atlantic and Pacific and the navigation of the river San Juan were concerned.

The project, which was inclosed in this dispatch, was, in the substance of its provisions and in most of its language, identical with the treaty subsequently concluded, with one marked exception. In the project Article VII stopped with the general provision to give encouragement and support to the first parties offering to commence the work with the necessary capital. In the subsequent negotiations the following words were added to that article and form part of Article VII of the executed treaty:

And if any persons or company should already have, with any State through which the proposed ship canal may pass, a contract for the construction of such a canal as that specified in this convention, to the stipulations of which contract neither of the contracting parties in this convention have any just cause to object, and the said persons or company shall, moreover, have made preparations and expended time, money, and trouble on the faith of such contract, it is hereby agreed that such persons or company shall have a priority of claim over every other person, persons, or company to the protection of the Governments of the United States and Great Britain, and be allowed a year from the date of the exchange of the ratifications of this convention for concluding their arrangements and presenting evidence of sufficient capital sub-

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scribed to accomplish the contemplated undertaking, it being understood that if at the expiration of the aforesaid period such persons or company be not able to commence and carry out the proposed enterprise, then the Governments of the United States and Great Britain shall be free to afford their protection to any other persons or company that shall be prepared to commence and proceed with the construction of the canal in question.

The Clayton-Bulwer treaty was concluded on the 19th of the following April, and I think it will not be denied that the object which President Taylor, Mr. Clayton, Sir Henry Bulwer, and Lord Palmerston had in view in making it was primarily and mainly this: To insure at the earliest possible moment the completion of the particular ship canal for which a concession had been made by Nicaragua to citizens of the United States on the 29th of August, 1849; all the interviews of which accounts remain, and all the correspondence relate to this particular canal and to no other. As if to make assurance doubly sure, the project of a treaty which Sir Henry Bulwer sent to Lord Palmerston the 3d of February, being found doubtful or insufficient in this respect, was so amended between that time and the 19th April as to make it practically certain that that grant would be accepted by both Governments as the one covered by the treaty.

It was to this particular canal that were to be applied all the provisions of the first article in the treaty relating to the fortification of the canal, the control over it, and exclusive advantage in it; of the second article, relating to blockade, detention or capture; of the third and fourth articles, relating to protection during construction and to free ports; of the fifth article, in regard to a guaranty of neutrality; of the sixth article, with regard to treaties with other states, and the use of the good offices of the high contracting parties; and of the seventh article, as already noticed; but if under the provisions of the seventh article the claims of the holders of this particular concession should be set aside, then each Government reserved to itself the right to determine whether its interests required it to afford protection to the holders of any other concession.

The two Governments did, however, subsequently come to a harmonious agreement with regard to the grant by Nicaragua, the one contemplated by the treaty,

The company was organized, and Colonel Childs, who had been chief engineer of the canals of the State of New York, was sent to Nicaragua to make a survey. He arrived there in August, 1850, and in 1852 his report was received, printed, and laid before the Secretary of War by direction of the President, who detailed Colonel Abert and Lieutenant-Colonel Turnbull, of the United States Army, to examine it and give their opinions upon it. They approved the report on the 20th March, 1852.

On the 16th June, in the same year, Mr. Lawrence informed Lord Malmesbury of these facts, and requested Her Majesty's Government to appoint engineers of skill and experience to examine it on the part of that Government.

Mr. Lawrence was on the 30th July informed that an officer of the royal engineers and an eminent civil engineer had been appointed for that purpose, and on the 13th August their report was transmitted to Mr. Lawrence by Lord Malmesbury. The report was favorable, and a combination of British capitalists was made in contemplation of united action with American shareholders in the construction of the canal. For reasons which need not now be repeated, but principally because

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of the discussion which immediately began as to the clauses of the treaty relating to settlements in British Honduras, the project failed, and no canal was ever constructed under that grant.

A line of steamers was put on and run for many years, carrying passengers between New York and San Francisco. The expedition of Walker into Nicaragua terminated this line. The grant was revoked, the steamers were seized; the stockholders received no benefit from their property, and although the company nominally exists, it has been practically superseded by subsequent grants from Nicaragua to other companies.

It was also agreed in the treaty that the parties should invite other states to enter into similar stipulation, to the end that they might share in the "honor and advantage of having contributed to a work of such general interest and importance as the canal herein contemplated," to wit, that by the Nicaragua route.

It is to be observed that if other nations were to become parties to the enterprise it was only on the joint invitation of both the United States and Great Britain; but the President regards the provision as lapsed by the failure to construct the canal to which it referred, and by the fact before stated that experience has shown that no joint protectorate for any canal across the isthmus is requisite. The canal, however, now in question is on the Panama and not on the Nicaragua route.

The remaining subject of the treaty is contained in the eighth article, which relates to a canal or railway across the isthmus other than by the Nicaragua route, as by way of Tehuantepec or Panama, and it is this provision of the treaty which has occasioned this correspondence. The article provides as follows:

> The Governments of the United States and Great Britain having not only desired, in entering into this convention, to accomplish a *particular object* [to wit, the Nicaragua Canal, which, at the date of the treaty, it was thought was about to be constructed], but also to establish a general principle, they hereby agree to extend their protection, by *treaty stipulations*, to any other communications, whether by canal or railway, across the Isthmus which connects North and South America, and especially to the interoceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by the way of Tehuantepec or Panama.

It is to be here observed that the Government of the United States has a treaty with New Grenada, now a part of the United States of Colombia, entered into in 1846, by which free transit is guaranteed to the citizens of the United States across the Isthmus of Panama upon any mode of communication that may be constructed, subject to no duties or burdens but such as may be imposed upon citizens of New Grenada, and by which, in order to secure the tranquil and constant enjoyment of these advantages, the United States guaranteed, positively and efficaciously, the *perfect neutrality of the Isthmus*, with the view that free transit from sea to sea might not be interrupted or embarrassed, and also guaranteed the rights of sovereignty and property which New Grenada (now the United States of Colombia) had and possesses over said territory.

By this treaty with New Grenada the United States claim to occupy a peculiar relation to the means of transit by railroad or canal across the Isthmus, within the territories of the United States of Colombia, a relation which cannot justly be superseded by the intervention of other States without the consent of the United States, duly and properly obtained. A protectorate of this kind is, like government, necessarily

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exclusive in its character, and implies a right and duty to make it effective. There may be a joint protectorate engaged in by mutual convention of different states, but the protectorate itself must be a unit. The treaty with New Grenada of 1846 still remains in full force. If Great Britain should desire to be united with the Government of the United States in that guaranty, of course it would require the consent of the United States of Colombia and of this Government, and a convention to that end, the terms of which should be made agreeable to the parties.

Article VIII of the Clayton-Bulwer treaty relates only to those projects *now* [1850] proposed to be established; and expressly contemplates some further "treaty stipulation" on the part of Great Britain with the United States of America and New Grenada, now the United States of Colombia, before Great Britain can join the United States in the protectorate of the canal or railway by the Panama route. No such treaty stipulation has been made or has been proposed by Great Britain. Since the ratification of the Clayton-Bulwer treaty, for thirty years the United States, under the treaty of 1846 with New Grenada, has extended protection to the transit from sea to sea by the Panama Railway.

Should Her Majesty's Government, after obtaining the consent thereto of the United States of Colombia, claim under the Clayton-Bulwer treaty the right to join the United States in the protection of the existing Panama Railway, or any future Panama canal, the United States would submit that experience has shown that no such joint protectorate is requisite; that the Clayton-Bulwer treaty is subject to the provisions of the treaty of 1846 with New Grenada, while it exists, which treaty obliges the United States to afford and secure to it the sole protectorate of any transit by the Panama route; and if Great Britain still claimed the right to join in the protectorate the United States would then determine whether the "treaty stipulations" proposed by Great Britain regulating that joint protectorate were just; and, if so, whether the length of time during which Great Britain has concurred in the protection of the Panama route under the treaty with New Grenada has or has not relieved the United States from any obligation to accept a proposal from the Government to join in the guaranty.

I may then state the President's views on the whole subject, which I do with an assurance that they will meet with a candid consideration from Lord Granville, and with the hope that they may be substantially concurred in by Her Majesty's Government.

The Clayton-Bulwer treaty was concluded to secure a thing which did not exist, and which now never can exist. It was to secure the construction of a canal under the grant of 1849 from Nicaragua that the United States consented to waive the exclusive and valuable rights which have been given to them; that they consented to agree with Great Britain that they would not occupy, fortify, colonize, or assume dominion over any part of Central America, and that they consented to admit Her Majesty's Government at some future day to a share in the protection which they have exercised over the Isthmus of Panama.

The Government and people of the United States, though rich in land and industry, were poor in money and floating capital in 1850. The scheme for a canal, even without the complications of the Mosquito protectorate, was too vast for the means of the Americans of that day, who numbered then considerably less than one-half of their numbers

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to-day. They went to England, which had what they had not, surrendered their exclusive privileges, offered an equal share of all they had in those regions in order, as expressed in the seventh article of the treaty, "that no time should be unnecessarily lost in commencing and constructing the said canal." Through no fault of theirs time was unnecessarily lost, the work was never begun, and the concession failed.

The President does not think that the United States are called upon by any principle of equity to revive those provisions of the Clayton-Bulwer treaty which were specially applicable to the concession of August, 1849, and apply them to any other concession which has been since or may hereafter be made. The conditions of 1882 are not those of 1852. The people of the United States have now abundance of surplus capital for such enterprises, and have no need to call upon foreign capitalists. The legislative branch of the Government of the United States may also desire to be free to place the credit of the United States at the service of one or more of these enterprises. The President does not feel himself warranted in making any engagement or any admission respecting the extinct provisions of the Clayton-Bulwer treaty which would prevent or interfere with such a purpose. On the contrary, frankness requires him to say that as the persons who held the grant which the United States understood to be accepted by the two Governments under the provisions of the treaty have not "carried out the proposed enterprise," the United States esteem themselves competent to refuse to afford their protection jointly with Great Britain to any other person for company, and hold themselves free hereafter to protect any interoceanic communication in which they or their citizens may become interested in such way as treaties with the local sovereign powers may warrant and their interests may require.

There are some provisions of the treaty which the President thought might be advantageously retained. With this purpose the present correspondence was opened by the note to you of the 19th November last, in which these points were indicated. The President is still ready on the part of the United States to agree that the reciprocal engagements respecting the acquisition of territory in Central America, and respecting the establishment of a free port at each end of whatever canal may be constructed, shall continue in force, and to define by agreement the distance from either end of the canal where captures may be made by a belligerent in time of war, and with this definition thus made to keep alive the second article of the treaty. He hopes that Lord Granville on further consideration may not be averse to revising his opinion that such agreements would not be beneficial.

To the suggestion made by Lord Granville, at the close of this note of January 7, that the United States should take the initiative in an invitation to other powers to participate in an agreement based upon the convention of 1850, the President is constrained, by the considerations already presented, to say that the United States can not take part in extending such an invitation, and to state with entire frankness, that the United States would look with disfavor upon an attempt at a concert of political action by other powers in that direction.

It is not necessary to observe that there is no provision of the Clayton-Bulwer treaty which authorizes Great Britain to invite, or obliges the United States to accept, the aid of other nations to protect or to guarantee the neutrality of the Panama route.

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Fortunately the want of harmony in the views of the two Governments can have at present no injurious influence. No canal yet exists across the Isthmus, and in the natural course of events some time must elapse before one can be constructed; meanwhile the points of divergence between Her Majesty's Government and that of the United States may disappear. The President hopes that long before the subject becomes one of practical importance Her Majesty's Government may be brought to see that the interests of Great Britain and of the United States in this matter are identical, and are best promoted by the peaceful policy which he has marked out for this country.

In the meantime the diversity of opinion which now exists will not in any wise impair the good understanding happily existing between the people and Governments of the United States and Great Britain.

You will read this dispatch to Lord Granville, and if he desires to have a copy of it you may leave one with him.

I am, sir, your obedient servant,

FREDK. T. FRELINGHUYSEN.

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II.

EXPLANATORY DOCUMENTS AND PAPERS.

1.—*Definite Treaty of Peace between Great Britain and Spain. Signed at Paris, the 10th of February, 1763.*

[Extract.]

XVII. His Britannic Majesty shall cause to be demolished all the fortifications which his Subjects shall have erected in the Bay of Honduras, and other places of the Territory of Spain in that part of the World, 4 months after the Ratification of the present Treaty; and His Catholic Majesty shall not permit His Britannic Majesty's Subjects, or their Workmen, to be disturbed or molested, under any pretence whatsoever, in the said places, in their occupation of cutting, loading and carrying away logwood; and for this purpose, they may build without hindrance, and occupy without interruption, the houses and magazines which are necessary for them, for their families and for their effects; and His Catholic Majesty assures to them, by this Article, the full enjoyment of those advantages and powers on the Spanish Coasts and Territories, as above stipulated, immediately after the Ratification of the present Treaty.

2.—*Definitive Treaty of Peace between Great Britain and Spain. Signed at Versailles, 3d September, 1783.*

[Extract.]

VI. The intention of the 2 High Contrating Parties being to prevent as much as possible, all the causes of complaint and misunderstanding heretofore occasioned by the cutting of wood for dyeing, or log-wood; and several English settlements having been formed and extended, under that pretence, upon the Spanish continent; it is expressly agreed, that His Britannic Majesty's Subjects shall have the right of cutting, loading and carrying away logwood, in the District lying between the Rivers Wallis or Bellize, and Rio Hondo, taking the course of the said 2 Rivers for unalterable boundaries, so as that the navigation of them be common to both Nations, to wit: by the River Wallis or Bellize, from the sea, ascending as far as opposite to a Lake or Inlet which runs into the land and forms an Isthmus or Neck, with another similar inlet, which comes from the side of Rio-Nuevo, or New River; so that the line of separation shall pass straight across the said Isthmus, and meet another Lake formed by the water of Rio Nuevo, or New River, at its current. The said line shall continue with the course of Rio Nuevo, descending as far as opposite to a River, the source of which is marked in the Map, between Rio-Nuevo and Rio-Hondo, and which empties itself into Rio Hondo; which River shall also serve as a common boundary, so far as its junction with Rio-Hondo, and from thence descending

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by Rio-Hondo to the sea, as the whole is marked on the map which the Plenipotentiaries of the 2 Crowns have thought proper to make use of, for ascertaining the points agreed upon, to the end that a good correspondence may reign between the 2 Nations, and that the English Workmen, Cutters, and Laborers may not trespass, from an uncertainty of the Boundaries. The respective Commissaries shall fix upon convenient places, in the Territory above marked out, in order that His Britannic Majesty's Subjects, employed in the felling of logwood, may, without interruption, build therein houses and magazines necessary for themselves, their Families, and their effects: and His Catholic Majesty assures to them the enjoyment of all that is expressed in the present article; provided that these Stipulations shall not be considered as derogating in any wise from his Rights of Sovereignty. Therefore all the English, who may be dispersed in any other parts, whether on the Spanish Continent, or in any of the Islands whatsoever, dependent on the aforesaid Spanish Continent, and for whatever reason it might be, without exception, shall retire within the District which has been above described, in the space of 18 months, to be computed from the exchange of the Ratifications; and for this purpose Orders shall be issued on the part of His Britannic Majesty; and on that of His Catholic Majesty, his Governors shall be ordered to grant to the English, dispersed, every convenience possible for their removing to the Settlement agreed upon by the present Article, or for their retiring wherever they shall think proper. It is likewise stipulated, that if any Fortifications should actually have been heretofore erected within the limits marked out, His Britannic Majesty shall cause them all to be demolished, and he will order his Subjects not to build any new ones. The English Inhabitants, who shall settle there for the cutting of log-wood, shall be permitted to enjoy a free Fishery for their subsistence, on the Coasts of the District above agreed on, or of the Islands situated opposite thereto, without being in any wise disturbed on that account; provided they do not establish themselves in any manner on the said Islands.

3.—*Convention between Great Britain and Spain, relative to America. Signed at London, the 14th of July, 1786.*

The Kings of England and of Spain animated with the same desire of consolidating, by every means in their power, the friendship so happily subsisting between them and their Kingdoms, and wishing with one accord to prevent even the shadow of misunderstanding which might be occasioned by doubts, misconceptions, or other causes of dispute between the Subjects on the Frontiers of the 2 Monarchies, especially in distant Countries as are those in America, have thought proper to settle, with all possible good faith, by a new Convention, the points which might one day or other, be productive of such inconveniences, as the experience of former times has very often shown.

To this end, the King of Great Britain has named the Most Noble and Most Excellent Lord, Francis Baron Osborne, of Kiveton, Marquis of Carmarthen, His Britannic Majesty's Privy Councillor, and Principal Secretary of State for the Department for Foreign Affairs, &c., &c., &c., and the Catholic King has likewise authorized Don Bernardo del Campo, Knight of the Noble Order of Charles the Third, Secretary of the same Order, Secretary of the Supreme Council of State, and his Minister

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Plenipotentiary to the King of Great Britain: who having communicated to each other their respective Full Powers, prepared in due form, have agreed upon the following Articles:

ART. I. His Britannic Majesty's Subjects, and the other Colonists who have hitherto enjoyed the protection of England, shall evacuate the Country of the Mosquitos, as well as the Continent in general, and the Islands adjacent, without exception, situated beyond the Line hereinafter described, as what ought to be the Frontier of the extent of Territory granted by His Catholic Majesty to the English, for the uses specified in the IIIrd Article of the present Convention, and in addition to the Country already granted to them in virtue of the Stipulations agreed upon by the Commissaries of the 2 Crowns, in 1783.

II. The Catholic King, to prove, on his side, to the King of Great Britain, the sincerity of his sentiments of friendship towards His said Majesty and the British Nation, will grant to the English more extensive limits than those specified in the last Treaty of Peace: and the said limits of the Lands added by the present Convention shall for the future be understood in the manner following:

The English Line, beginning from the Sea, shall take the centre of the River Sibun or Jabon, and continue up to the source of the said River; from thence it shall cross in a straight line the intermediate land, till it intersects the River Wallis; and by the centre of the same River, the said Line shall descend to the point where it will meet the Line already settled and marked out by the Commissaries of the 2 Crowns in 1783: which limits, following the continuation of the said Line, shall be observed as formerly stipulated by the Definitive Treaty.

III. Although no other advantages have hitherto been in question, except that of cutting wood for dyeing, yet His Catholic Majesty, as a greater proof of his disposition to oblige the King of Great Britain, will grant to the English the liberty of cutting all other wood, without even excepting mahogany, as well as gathering all the fruits or produce of the earth, purely natural and uncultivated, which may, besides being carried away in their natural state, become an object of utility or of commerce, whether for food or for manufactures; but it is expressly agreed, that this Stipulation is never to be used as a pretext for establishing in that country any plantation of sugar, coffee, cocoa, or other like articles: or any fabric or manufacture by means of mills or other machines whatsoever, (this restriction however does not regard the use of saw-mills, for cutting or otherwise preparing the wood,) since all the Lands in question being indisputably acknowledged to belong of right to the Crown of Spain, no Settlements of that kind, or the Population which would follow, could be allowed.

The English shall be permitted to transport and convey all such wood, and other produce of the place, in its natural and uncultivated state, down the Rivers to the Sea, but without ever going beyond the limits which are prescribed to them by the Stipulations above granted, and without thereby taking an opportunity of ascending the said Rivers, beyond their bounds, into the countries belonging to Spain.

IV. The English shall be permitted to occupy the small Island known by the names of Casina, St. George's Key, or Cayo Casina, in consideration of the circumstance of that part of the coasts opposite to the said Island being looked upon as subject to dangerous disorders; but this permission is only to be made use of for purposes of real utility: and as great abuses, no less contrary to the intentions of the British Government than to the essential interests of Spain, might arise from this permission, it is here stipulated, as an indispensable condition, that no

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Fortification, or work of defence whatever, shall at any time be erected there, nor any body of Troops posted, nor any piece of Artillery kept there; and in order to verify with good faith the accomplishment of this condition *sine quâ non* (which might be infringed by Individuals, without the knowledge of the British Government) a Spanish Officer or Commissary, accompanied by an English Commissary or Officer, duly authorized, shall be admitted, twice a year, to examine into the real situation of things.

V. The English nation shall enjoy the liberty of re-fitting their Merchant Ships in the southern triangle included between the point of Cayo Casina and the cluster of small Islands which are situated opposite that part of the coast occupied by the Cutters, at the distance of 8 leagues from the River Wallis, 7 from Cayo Casina, and 3 from the River Sibun, a place which has always been found well-adapted to that purpose. For which end, the edifices and storehouses, absolutely necessary for that service, shall be allowed to be built; but in this concession is also included the express condition of not erecting Fortifications there at any time, or stationing Troops, or constructing any military works; and in like manner it shall not be permitted to station any Ships of War there, or to construct an arsenal or other building, the object of which might be the formation of a naval establishment.

VI. It is also stipulated, that the English may freely and peaceably catch Fish on the coast of the Country assigned to them by the last Treaty of Peace, as also of that which is added to them by the present Convention; but without going beyond their boundaries, and confining themselves within the distance specified in the preceding Article.

VII. All the restrictions specified in the last Treaty of 1783, for the entire preservation of the right of the Spanish Sovereignty over the country, in which is granted to the English only the privilege of making use of the wood of the different kinds, the fruits and other produce, in their natural state, are here confirmed; and the same restrictions shall also be observed with respect to the new grant. In consequence, the Inhabitants of those Countries shall employ themselves simply in the cutting and transporting of the said wood, and in the gathering and transporting of the fruits, without meditating any more expensive Settlements, or the formation of any system of Government, either military or civil, further than such regulations as Their Britannic and Catholic Majesties may hereafter judge proper to establish, for maintaining peace and good order amongst their respective Subjects.

VIII. As it is generally allowed that the woods and forests are preserved, and even multiply, by regular and methodical cuttings, the English shall observe this maxim as far as possible; but if, notwithstanding all their precautions, it should happen, in course of time, that they were in want of dyeing-wood or mahogany, with which the Spanish Possessions might be provided, the Spanish Government shall make no difficulty to furnish a supply to the English at a fair and reasonable price.

IX. Every possible precaution shall be observed to prevent smuggling; and the English shall take care to conform to the regulations which the Spanish Government shall think proper to establish amongst their own Subjects, in all communications which they may have with the latter; on condition, nevertheless, that the English shall be left in the peaceable enjoyment of the several advantages inserted in their favour in the last Treaty, or stipulated by the Present Convention.

X. The Spanish Governors shall be ordered to give to the said English, dispersed, all possible facilities for their removal to the Settlements

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agreed upon by the present Convention, according to the Stipulations of the VIth Article of the Definitive Treaty of 1783, with respect to the Country allotted for their use by the said Article.

XI. Their Britannic and Catholic Majesties, in order to remove every kind of doubt with regard to the true construction of the present Convention, think it necessary to declare that the conditions of the said Convention ought to be observed according to their sincere intention to ensure and improve the harmony and good understanding which so happily subsist at present between Their said Majesties.

In this view, His Britannic Majesty engages to give the most positive orders for the evacuation of the Countries above-mentioned, by all his Subjects, of whatever denomination; but if, contrary to such Declaration, there should still remain any Persons so daring as to presume, by retiring into the interior Country, to endeavor to obstruct the entire evacuation already agreed upon, His Britannic Majesty, so far from affording them the least succour, or even protection, will disavow them in the most solemn manner, as he will equally do those who may here after attempt to settle upon the Territory belonging to the Spanish Dominion.

XII. The evacuation agreed upon shall be completely effected within the space of 6 months after the exchange of the Ratifications of this Convention, or sooner if it can be done.

XIII. It is agreed that the new grants described in the preceding Articles, in favor of the English Nation, are to take place as soon as the aforesaid evacuation shall be entirely accomplished.

XIV. His Catholic Majesty, prompted solely by motives of humanity, promises to the King of England, that he will not exercise any act of severity against the Mosquitos, inhabiting in part the Countries which are to be evacuated, by virtue of the present Convention, on account of the connections which may have subsisted between the said Indians and the English; and His Britannic Majesty, on his part, will strictly prohibit all his Subjects from furnishing arms or war-like stores to the Indians in general, situated upon the Frontiers of the Spanish Possessions.

XV. The 2 Courts shall mutually transmit to each other Duplicates of the Orders which they are to dispatch to their respective Governors and Commanders in America, for the accomplishment of the present convention; and a Frigate, or proper Ship of War, shall be appointed on each side, to observe in conjunction that all things are performed in the best order possible, and with that cordiality and good faith of which the 2 Sovereigns have been pleased to set the example.

XVI. The present Convention shall be ratified by Their Britannic and Catholic Majesties, and the Ratifications exchanged, within the space of 6 weeks, or sooner if it can be done.

In witness whereof, we, the undersigned Ministers Plenipotentiary to Their Britannic and Catholic Majesties, in virtue of our respective Full Powers, have signed the present Convention, and have affixed thereto the Seals of our Arms.

Done at London, this 14th day of July 1786.

[L. S.] CARMARTHEN
[L. S.] LE CHEVR. DEL CAMPO.

DECLARATION.

At the time of exchanging our Sovereigns' Ratifications of the Convention signed the 14th of July last, we the Undersigned Ministers

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Plenipotentiary have agreed, that the visit of the English and Spanish Commissaries, mentioned in the IVth Article of the said Convention with respect to the Island of Cayo Casina, is to extend in like manner to all the other places, whether in the Islands or on the Continent, where the English Cutters shall be situated.

In witness whereof, we have signed this Declaration, and affixed thereto the Seals of our Arms.

London, this 1st of September 1786.

[L. S.] CARMARTHEN.
[L. S.] LE MARQUIS DEL CAMPO.

4.—*President Monroe's message to Congress, March 8, 1822.*

[Extract.]

The revolutionary movement in the Spanish provinces in this hemisphere attracted the attention and excited the sympathy of our fellow citizens from its commencement.

This feeling was natural and honorable to them, from causes which need not be communicated to you. It has been gratifying to all to see the general acquiescence which has been manifested in the policy which the constituted authorities have deemed it proper to pursue in regard to this contest. As soon as the movement assumed such a steady and consistent form as to make the success of the provinces probable, the rights to which they were entitled by the laws of nations, as equal parties to a civil war, were extended to them. Each party was permitted to enter our ports with its public and private ships, and to take from them every article which was the subject of commerce with other nations. Our citizens also have carried on commerce with both parties, and the Government has protected it with each in articles not contraband of war. Through the whole of this contest the United States have remained neutral, and have fulfilled with the utmost impartiality all the obligations incident to that character.

This contest has now reached such a stage, and been attended with such decisive success on the part of the provinces, that it merits the most profound consideration whether their right to the rank of independent nations, with all the advantages incident to it in their intercourse with the United States, is not complete. Buenos Ayres assumed that rank by a formal declaration in 1816, and has enjoyed it since 1810, free from invasion by the parent country. The provinces composing the Republic of Colombia, after having separately declared their independence, were united by a fundamental law of the 17th of December, 1819. A strong Spanish force occupied at that time certain parts of the territory within their limits, and waged a destructive war. That force has since been repeatedly defeated, and the whole of it either made prisoners or destroyed, or expelled from the country, with the exception of an inconsiderable portion only which is blockaded in two fortresses.

The provinces on the Pacific have likewise been very successful. Chili declared her independence in 1818, and has since enjoyed it undisturbed; and of late, by the assistance of Chili and Buenos Ayres, the revolution has extended to Peru. Of the movement in Mexico our information is less authentic, but it is, nevertheless, distinctly understood that the new government has declared its independence, and that there

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is now no opposition to it there, nor a force to make any. For the last three years the Government of Spain has not sent a single corps of troops to any part of that country; nor is there any reason to believe it will send any in future. Thus, it is manifest that all those provinces are not only in the full enjoyment of their independence, but, considering the state of the war and other circumstances, that there is not the most remote prospect of their being deprived of it.

When the result of such a contest is manifestly settled, the new governments have a claim to recognition by other powers which ought not to be resisted. Civil wars too often excite feelings which the parties cannot control. The opinion entertained by other powers as to the result may assuage those feelings, and promote an accommodation between them useful and honorable to both. The delay which has been observed in making a decision on this important subject will, it is presumed, have afforded an unequivocal proof to Spain, as it must have done to other powers, of the high respect entertained by the United States for her rights, and of their determination not to interfere with them. The provinces belonging to this hemisphere are our neighbors, and have successively, as each portion of the country acquired its independence, pressed their recognition by an appeal to facts not to be contested, and which they thought gave a just title to it.

To motives of interest this government has invariably disclaimed all pretension, being resolved to take no part in the controversy or other measures in regard to it which should not merit the sanction of the civilized world.

To other claims a just sensibility has been always felt and frankly acknowledged; but they in themselves could never become an adequate cause of action. It was incumbent on this government to look to every important fact and circumstance on which a sound opinion could be formed, which has been done. When we regard, then, the great length of time which this war has been prosecuted, the complete success which has attended it in favor of the provinces, the present condition of the parties, and the utter inability of Spain to produce any change in it, we are compelled to conclude that its fate is settled, and that the provinces which have declared their independence, and are in the enjoyment of it, ought to be recognized.

Of the views of the Spanish government on this subject no particular information has been recently received. It may be presumed that the successful progress of the revolution through such a long series of years, gaining strength and extending annually in every direction, and embracing, by the late important events, with little exception, all the dominions of Spain south of the United States on this continent, placing thereby the complete sovereignty over the whole in the hands of the people, will reconcile the parent country to an accommodation with them on the basis of their unqualified independence. Nor has any authentic information been recently received of the disposition of other powers respecting it. A sincere desire has been cherished to act in concert with them in the proposed recognition, of which several were some time past duly apprised; but it was understood that they were not prepared for it. The immense space between those powers, even those which border on the Atlantic, and these provinces make the movement an affair of less interest and excitement to them than to us. It is probable therefore that they have been less attentive to its progress than we have been. It may be presumed, however, that the late events will dispel all doubts of the result.

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5.—*Observations of John Quincy Adams on the claim of Russia to territorial possessions on the continent of North America, communicated with Mr. Adams' letter to Mr. Middleton of July 22, 1823.*

[Extract.]

There can perhaps be no better time for saying frankly and explicitly to the Russian Government that the future peace of the world and the interest of Russia herself cannot be promoted by Russian settlements upon any part of the American continent. With the exception of the British establishments north of the United States, the remainder of both the American continents must henceforth be left to the management of American hands.

It cannot possibly be the purpose of Russia to form extensive colonial establishments in America. The new American republics will be as impatient of a Russian neighbor as the United States; and the claim of Russia to territorial possessions extending to the fifty-first degree of north latitude is equally compatible with the British pretensions.

Mr. John Quincy Adams to Mr. Rush.

[Extract.]

No. 70.] DEPARTMENT OF STATE,
Washington, July 22, 1823.

SIR: * * * It is not imaginable that, in the present condition of the world, any European nation should entertain the project of settling a colony on the northwest coast of America. That the United States should form establishments there with views of absolute territorial right and inland communication, is not only to be expected, but is pointed out by the finger of nature, and has been for years a subject of serious deliberation in Congress. A plan has for several sessions been before them for establishing a territorial government on the borders of the Columbia River. It will undoubtedly be resumed at their next session, and even if then again postponed, there cannot be a doubt that in the course of a very few years it must be carried into effect.

* * * * * * *

The application of colonial principles of exclusion, therefore, cannot be admitted by the United States as lawful upon any part of the northwest coast of America, or as belonging to any European nation. Their own settlements there, when organized as territorial governments, will be adapted to the freedom of their own institutions, and, as constituent parts of the Union, be subject to the principles and provisions of their constitution. * * * * *

I have, &c.,

JOHN QUINCY ADAMS.

6.—*Mr. Rush to Mr. John Quincy Adams.*

No. 323.] LONDON, *August 19, 1823.* (Received October 9.)

SIR: When my interview with Mr. Canning, on Saturday, was about to close, I transiently asked him whether, notwithstanding the late news from Spain, we might not still hope that the Spaniards would get the better

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of all their difficulties. I had allusion to the defection of Ballasteros in Andalusia, an event seeming to threaten with new dangers the Constitutional cause. His reply was general, importing nothing more than his opinion of the increased difficulties and dangers with which, undoubtedly, this event was calculated to surround the Spanish cause.

Pursuing the topic of Spanish affairs, I remarked that should France ultimately effect her purposes in Spain, there was at least the consolation left that Great Britain would not allow her to go further and lay her hands upon the Spanish colonies, bringing them, too, under her grasp. I here had in my mind the sentiments promulgated upon this subject in Mr. Canning's note to the British ambassador at Paris of the 31st of March, during the negotiations that preceded the invasion of Spain. It will be recollected that the British Government say in this note that time and the course of events appeared to have substantially decided the question of the separation of these colonies from the mother country, although their formal recognization as independent states by Great Britain might be hastened or retarded by external circumstances, as well as by the internal condition of those new states themselves; and that as His Britannic Majesty disclaimed all intention of appropriating to himself the smallest portion of the late Spanish possessions in America, he was also satisfied that no attempt would be made by France to bring any of them under *her* dominion, either by conquest or by cession from Spain.

By this we are to understand, in terms sufficiently distinct, that Great Britain would not be passive under such an attempt by France, and Mr. Canning, on my having referred to this note, asked me what I thought my government would say to going hand in hand with this, in the same sentiment; not, as he added, that any concert in action under it could become necessary between the two countries, but that the simple fact of our being known to hold the same sentiment would, he had no doubt, by its moral effect, put down the intention on the part of France, admitting that she should ever entertain it. This belief was founded, he said, upon the large share of the maritime power of the world which Great Britain and the United States shared between them, and the consequent influence which the knowledge that they held a common opinion upon a question on which such large maritime interests, present and future, hung, could not fail to produce upon the rest of the world.

I replied that in what manner my government would look upon such a suggestion I was unable to say, but that I would communicate it in the same informal manner in which he threw it out. I said, however, that I did not think I should do so with full advantage, unless he would at the same time enlighten me as to the precise situation in which His Majesty's Government stood at this moment in relation to those new states, and especially on the material point of their own independence.

He replied that Great Britain certainly never again intended to lend her instrumentality or aid, whether by mediation or otherwise, towards making up the dispute between Spain and her colonies, but that if this result could still be brought about she would not interfere to *prevent* it. Upon my intimating that I had supposed that all idea of Spain ever recovering her authority over the colonies had long since gone by, he explained by saying that he did not mean to controvert that opinion, for he, too, believed that the day had arrived when all America might be considered as lost to Europe so far as the tie of political dependence was concerned. All that he meant was, that if Spain and the colonies should still be able to bring the dispute, not yet totally extinct between

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them, to a close upon terms satisfactory to both sides, and which should at the same time secure to Spain commercial or other advantages not extended to other nations, that Great Britain would not object to a compromise in this spirit of preference to Spain. All that she would ask would be to stand upon as favored a footing as any other nation after Spain. Upon my again alluding to the improbability of the dispute ever settling down now even upon this basis, he said that it was not his intention to maintain such a position, and that he had expressed himself as above rather for the purpose of indicating the feeling which this cabinet still had towards Spain in relation to the controversy than of predicting results.

Wishing, however, to be still more specifically informed, I asked whether Great Britain was at this moment taking any step, or contemplating any, which had reference to the recognition of these States, this being the point in which we felt the chief interest.

He replied that she had taken none whatever, as yet, but was upon the eve of taking one, not final, but preparatory, and which would still leave her at large to recognize or not, according to the position of events at a future period. The measure in question was to send out one or more individuals under authority from this government to South America, not strictly diplomatic, but clothed with powers in the nature of a commission of inquiry, and which in short he described as analogous to those exercised by our own commissioners in 1817, and that upon the result of this commission much might depend as to the ulterior conduct of Great Britain. I asked whether I was to understand that it would comprehend all the new States, or which of them. To which he replied that for the present it would be limited to Mexico.

Reverting to his first idea, he again said that he hoped that France would not, should even events in the Peninsula be favorable to her, extend her views to South America for the purpose of reducing the colonies, nominally, perhaps, for Spain, but in effect to subserve ends of her own; but that, in case she should meditate such a policy, he was satisfied that the knowledge of the United States being opposed to it, as well as Great Britain, could not fail to have its influence in checking her steps. In this way he thought good might be done by prevention, and peaceful prospects all around increased. As to the form in which such knowledge might be made to reach France, and even the other powers of Europe, he said, in conclusion, that that might probably be arranged in a manner that would be free from objection.

I again told him that I would convey his suggestions to you for the information of the President, and impart to him whatever reply I might receive. My own inference rather is that his proposition was a fortuitous one; yet he entered into it, I thought, with some interest, and appeared to receive with a corresponding satisfaction the assurance I gave him that it should be made known to the President. I did not feel myself at liberty to express any opinion unfavorable to it, and was as careful to give none in its favor.

Mr. Canning mentioned to me, at this same interview, that a late confidential dispatch which he had seen from Count Nesselrode to Count Lieven, dated, I think, in June, contained declarations respecting the Russian ukase, relative to the northwest coast, that were satisfactory; that they went to show that it would probably not be executed in a manner to give cause of complaint to other nations, and that, in particular, it had not yet been executed in any instance under orders issued by Russia subsequently to its first promulgation.

I have, &c., RICHARD RUSH.

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7.—*Mr. Rush to Mr. John Quincy Adams.*

No. 325.] LONDON, *August 23, 1823.* (Received October 9.)

SIR: I yesterday received from Mr. Canning a note, headed "private and confidendial," setting before me, in a more distinct form, the proposition respecting South American affairs which he communicated to me in conversation on the 16th, as already reported in my number 323. Of his note I lose no time in transmitting a copy for your information, as well as a copy of my answer to it, written and sent this day.

In shaping the answer on my own judgment alone, I feel that I have had a task of some embarrassment to perform, and shall be happy if it receives the President's approbation.

I believe that this government has the subject of Mr. Canning's proposition much at heart, and certainly his note bears, upon the face of it, a character of cordiality towards the Government of the United States which cannot escape notice.

I have therefore thought it proper to impart to my note a like character and to meet the points laid down in his, as far as I could, consistently with other and paramount considerations.

These I conceived to be chiefly twofold: first, the danger of pledging my government to any measure or course of policy which might in any degree, now or hereafter, implicate it in the federative system of Europe; and, secondly, I have felt myself alike without warrant to take a step which might prove exceptional in the eyes of France, with whom our pacific and friendly relations remain, I persume, undisturbed, whatever may be our speculative abhorrence of her attack upon the liberties of Spain.

In framing my answer, I had also to consider what was due to Spain herself, and I hope that I have not overlooked what was due to the colonies.

The whole subject is open to views on which my mind has deliberated anxiously. If the matter of my answer shall be thought to bear properly upon the motives and considerations which belong most materially to the occasion, it will be a source of great satisfaction to me.

The tone of earnestness in Mr. Canning's note, and the force of some of his expressions, naturally start the inference that the British cabinet cannot be without its serious apprehensions that ambitious enterprises are mediated against the independence of the South American States. Whether by France alone I cannot now say on any authentic grounds.

I have, &c.,

RICHARD RUSH.

Mr. Canning to Mr. Rush.

Private and confidential.] FOREIGN OFFICE, *August 20, 1823.*

MY DEAR SIR: Before leaving town I am desirous of bringing before you in a more distinct, but still in an unofficial and confidential shape, the question which we shortly discussed the last time that I had the pleasure of seeing you.

Is not the moment come when our governments might understand each other as to the Spanish-American colonies? And if we can arrive at such an understanding, would it not be expedient for ourselves, and beneficial for all the world, that the principles of it should be clearly settled and plainly avowed?

For ourselves we have no disguise.

1. We conceive the recovery of the colonies by Spain to be hopeless.

2. We conceive the question of the recognition of them, as independent states, to be one of time and circumstances.

3. We are, however, by no means disposed to throw any impediment in the way of an arrangement between them and the mother country by amicable negotiation.

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4. We aim not at the possession of any portion of them ourselves.

5. We could not see any portion of them transferred to any other power with indifference.

If these opinions and feelings are, as I firmly believe them to be, common to your government with ours, why should we hesitate mutually to confide them to each other, and to declare them in the face of the world?

If there be any European power which cherishes other projects, which looks to a forcible enterprise for reducing the colonies to subjugation, on the behalf or in the name of Spain, or which meditates the acquisition of any part of them to itself, by cession or by conquest, such a declaration on the part of your government and ours would be at once the most effectual and the least offensive mode of intimating our joint disapprobation of such projects.

It would at the same time put an end to all the jealousies of Spain with respect to her remaining colonies, and to the agitation which prevails in those colonies, an agitation which it would be but humane to allay, being determined (as we are) not to profit by encouraging it.

Do you conceive that, under the power which you have recently received, you are authorized to enter into negotiation, and to sign any convention upon this subject? Do you conceive, if that be not within your competence, you could exchange with me ministerial notes upon it?

Nothing could be more gratifying to me than to join with you in such a work, and I am persuaded there has seldom, in the history of the world, occurred an opportunity when so small an effort of two friendly governments might produce so unequivocal a good, and prevent such extensive calamities.

I shall be absent from London but three weeks at the utmost, but never so far distant but that I can receive and reply to any communication within three or four days.

I have, &c.,

GEORGE CANNING.

Mr. Rush to Mr. Canning.

LONDON, *August 23, 1823.*

MY DEAR SIR: Your unofficial and confidential note of the 20th instant reached me yesterday, and has commanded from me all the reflection due to the interest of its subject and to the friendly spirit of confidence upon which it is so emphatically founded.

The Government of the United States having, in the most formal manner, acknowledged the independence of the late Spanish provinces in America, desires nothing more anxiously than to see this independence maintained with stability, and under auspices that may promise prosperity and happiness to these new states themselves, as well as advantage to the rest of the world. As conducing to these great ends, my government has always desired, and still desires, to see them received into the family of nations by the powers of Europe, and especially, I may add, by Great Britain.

My government is also under a sincere conviction that the epoch has arrived when the interests of humanity and justice, as well as all other interests, would be essentially subserved by the general recognition of these states.

Making these remarks, I believe I may confidently say, that the sentiments unfolded in your note are fully those which belong also to my government.

It conceives the recovery of the colonies by Spain to be hopeless.

It would throw no impediment in the way of an arrangement between them and the mother country, by amicable negotiations, supposing an arrangement of this nature to be possible.

It does not aim at the possession of any portion of those communities for or on behalf of the United States.

It would regard as highly unjust and fruitful of disastrous consequences any attempt on the part of any European power to take possession of them by conquest, or by cession, or on any ground or pretext whatever.

But in what manner my government might deem it expedient to avow these principles and feelings, or express its disapprobation of such projects as the last, are points which none of my instructions, or the power which I have recently received, embrace; and they involve, I am forced to add, considerations of too much delicacy for me to act upon them in advance.

It will yield me particular pleasure to be the organ of promptly causing to be brought under the notice of the President the opinions and views of which you have made me the depositary upon this subject, and I am of nothing more sure than that he will fully appreciate their intrinsic interest, and not less the frank and friendly feelings towards the United States in which they have been conceived and communicated to me on your part.

Nor do I take too much upon myself when I anticipate the peculiar satisfaction the

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President will also derive from the intimation which you have not scrupled to afford me as to the just and liberal determinations of His Majesty's Government in regard to the colonies which still remain to Spain.

With a full reciprocation of the personal cordiality which your note also breathes, and begging you to accept the assurances of my great respect, I have, &c.,

RICHARD RUSH.

8.—*President Monroe's message to Congress December 2, 1823.*

[Extract.]

At the proposal of the Russian Imperial Government, made through the minister of the Emperor residing here, a full power and instructions have been transmitted to the minister of the United States at St. Petersburg to arrange by amicable negotiation the respective rights and interests of the two nations on the northwest coast of this continent. A similar proposal has been made by His Imperial Majesty to the Government of Great Britain, which has likewise been acceded to. The Government of the United States has been desirous by this friendly proceeding of manifesting the great value which they have invariably attached to the friendship of the Emperor, and their solicitude to cultivate the best understanding with his government.

In the discussions to which this interest has given rise, and in the arrangements by which they may terminate, the occasion has been judged proper for asserting as a principle, in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintained, are henceforth not to be considered as subjects for future colonization by any European powers.

* * * * * * *

The late events in Spain and Portugal show that Europe is still unsettled. Of this important fact no stronger proof can be adduced than that the allied powers should have thought it proper on any principle satisfactory to themselves to have interposed by force in the internal concerns of Spain. To what extent such interposition may be carried, on the same principle, is a question in which all independent powers whose governments differ from theirs are interested, even those most remote, and surely none more so than the United States.

Our policy in regard to Europe, which was adopted at an early stage of the wars, which have so long agitated that quarter of the globe, nevertheless remains the same, which is not to interfere in the internal concerns of any of its powers; to consider the government *de facto* as the legitimate government for us; to cultivate friendly relations with it, and to preserve those relations by a frank, firm, and manly policy, meeting, in all instances, the just claims of every power, submitting to injuries from none. But in regard to these continents, circumstances are eminently and conspicuously different. It is impossible that the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness, nor can any one believe that our southern brethren, if left to themselves, would adopt it of their own accord. It is equally, impossible, therefore that we should behold such interposition, in any form, with indifference. If we look to the comparative strength and resources of Spain and those new governments, and their distance from each other, it must be obvious that she can never subdue them. It is still the true policy of the United States to leave the parties to themselves, in the hope that other powers will pursue the same course.

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9.—*Mr. Rush to Mr. Middleton.*

[Extract.]

LONDON, *January 9, 1824.*

I have heretofore written to you on the 6th and 22d of December, and have now to inform you that from interviews which I have had with Mr. Canning, since the present month set in, I find that he will decline sending instructions to Sir Charles Bagot to proceed jointly with our government and that of Russia, in the negotiation relative to the northwest coast of America; but that he will be merely informed that it is now the intention of Great Britain to proceed separately.

Mr. Canning intimated to me that to proceed separately was the original intention of this government, to which effect Sir Charles Bagot had been instructed and never to any other, and that Sir Charles had only paused under your suggestions to him of its being the desire of our government that the three powers should move in concert at St. Petersburg upon this subject.

The resumption of its original course by this government has arisen chiefly from the principle which our government has adopted, of not considering the American continents as subjects for future colonization by any of the European powers, a principle to which Great Britain does not accede.

I have informed the Secretary of State of the above intention of this government. It will produce no alteration in my endeavors to obtain in negotiation here a settlement of the points as between the United States and Great Britain, respecting the northwest coast, in manner as my instructions lay them down to me.

10.—*Mr. Rush to Mr. John Quincy Adams.*

[Extract.]

LONDON, *August 12, 1824.*

SIR: * * * It is proper now, as on the question of the St. Lawrence, that I should give you faithful information of the manner in which the British plenipotentiaries received my proposal, and the principles under which I had introduced it. I may set out by saying, in a word, that they totally declined the one and totally denied the other. They said that Great Britain considered the whole of the unoccupied parts of America as being open to her future settlements in like manner as heretofore. They included within these parts as well that portion of the northwest coast lying between the forty-second and the fifty-first degrees of latitude as any other parts. The principle of colonization on that coast, or elsewhere on any portion of those continents not yet occupied, Great Britain was not prepared to relinquish. Neither was she prepared to accede to the exclusive claim of the United States. She had not, by her convention with Spain in 1790, or at any other period, conceded to that power any exclusive rights on that coast where actual settlements had not been formed. She considered the same principles applicable to it now as then. She could not concede to the United States, who held the Spanish title, claims which she had felt herself obliged to resist when advanced by Spain, and on her resistance to which the credit of Great Britain had been thought to depend.

* * * * * * *

I have, &c.,

RICHARD RUSH.

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11.—*Treaty of amity, commerce, and navigation between Great Britain and Mexico. Signed at London, December 26, 1826.*

[Extract.]

XIV. The subjects of his Britannic Majesty shall, on no account or pretext whatsoever, be disturbed or molested in the peaceable possession and exercise of whatever rights, privileges, and immunities they have at any time enjoyed within the limits prescribed and laid down in a convention signed between his said majesty and the King of Spain on the 14th of July, 1786; whether such rights, privileges, and immunities shall be derived from the stipulations of the said convention or from any other concession which may at any time have been made by the King of Spain or his predecessors to British subjects and settlers residing and following their lawful occupations within the limits aforesaid, the two contracting parties reserving, however, for some more fitting opportunity, the further arrangements on this article.

12.—*Treaty between the United States and New Granada of December 12, 1846.*

[Extract.]

ARTICLE XXXV.

The United States of America and the Republic of New Granada, desiring to make as durable as possible the relations which are to be established between the two parties by virtue of this treaty, have declared solemnly and do agree to the following points:

1st. For the better understanding of the preceding articles, it is and has been stipulated between the high contracting parties that the citizens, vessels, and merchandise of the United States shall enjoy in the ports of New Granada, including those of the part of the Granadian territory generally denominated *Isthmus of Panama*, from its southernmost extremity until the boundary of Costa Rica, all the exemptions, privileges, and immunities concerning commerce and navigation which are now or may hereafter be enjoyed by Granadian citizens, their vessels and merchandise; and that this equality of favors shall be made to extend to the passengers, correspondence, and merchandise of the United States in their transit across the said territory from one sea to the other. The government of New Granada guarantees to the government of the United States that the right of way or transit across the *Isthmus of Panama*, upon any modes of communication that now exist or that may be hereafter constructed, shall be open and free to the government and citizens of the United States, and for the transportation of any articles of produce, manufactures, or merchandise, of lawful commerce, belonging to the citizens of the United States; that no other tolls or charges shall be levied or collected upon the citizens of the United States, or their said merchandise thus passing over any road or canal that may be made by the government of New Granada, or by the authority of the same, than is, under like circumstances, levied upon and collected from the Granadian citizens; that any lawful produce, manufactures, or merchandise belonging to citizens of the United States thus passing from one sea to the other, in either direction, for the pur-

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pose of exportation to any other foreign country, shall not be liable to any import duties whatever; or, having paid such duties, they shall be entitled to drawback upon their exportation; nor shall the citizens of the United States be liable to any duties, tolls, or charges of any kind to which native citizens are not subjected for thus passing the said isthmus. And, in order to secure to themselves the tranquil and constant enjoyment of these advantages, and as an especial compensation for the said advantages, and for the favors they have acquired by the 4th, 5th, and 6th articles of this treaty, the United States guarantee positively and efficaciously to New Granada, by the present stipulation, the perfect neutrality of the before-mentioned isthmus, with the view that the free transit from the one to the other sea may not be interrupted or embarrassed in any future time while this treaty exists; and, in consequence, the United States also guarantee, in the same manner, the rights of sovereignty and property which New Granada has and possesses over the said territory.

13.—*Convention between the United States and Nicaragua, June 21, 1849 (concluded but not submitted to the Senate in consequence of the subsequent conclusion of the Clayton-Bulwer Treaty).*

The United States of America and the State of Nicaragua, having in view the grand design of opening and establishing through the territories of the latter State a passage and communication between the Caribbean Sea and the Pacific Ocean to facilitate the commerce between the two oceans and to produce other great results, and designing to establish, regulate, and define the grants, rights, privileges, and immunities that shall appertain to each other with reference to such great object by means of a treaty and special convention. For the accomplishment of these desirable purposes the President of the United States of America has conferred full powers on Elijah Hise, chargé d'affaires of the government of said States in Central America, and the State of Nicaragua hath likewise granted full powers to Sr. Lic^{do} Don Buenaventura Selva, chargé d'affaires of the government of the said State of Nicaragua near the United States legation in Central America, who, after having exchanged their said full powers in due and proper form, have agreed and do agree upon the following articles:

ARTICLE I.

It is solemnly agreed between the two high contracting parties that the State of Nicaragua doth grant to and confer upon the United States of America, or to a company of the citizens thereof, the exclusive right and privilege to make, construct, and build within the territories of the said State of Nicaragua, through or by the use and means of any of the streams, rivers, bays, harbors, lakes, or lands under the jurisdiction or within the limits of the said State, a canal or canals, a road or roads, either railways or turnpikes or any other kind of roads, for the purpose of opening a convenient passage and communication, either by land alone, or water alone, or by both land and water, and by means, if deemed proper, of locks and dams, or by any other mode of overcoming and removing the obstructions to the navigation of the said rivers, lakes, harbors, &c., between the Caribbean Sea and the Pacific Ocean, for the transit and passage of ships, steamers, sailing-vessels, boats, and vessels of all

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kinds, as well as vehicles of every sort used for the transportation and conveyance of persons and property and of goods, wares, and merchandise of every description, and the United States or the company which may be formed by virtue of such charters as shall be made as herein provided shall be permitted for the construction of said works to procure, take, and obtain within the territories of Nicaragua all kinds of materials, such as stone, timber, earths, and whatever else may be necessary and proper for the said purposes, free of any charge so far as the said materials may be procured on the lands belonging to said State.

ARTICLE II.

The State of Nicaragua cedes and grants to the United States, or to a chartered company of the citizens thereof, as the case may be, absolutely, all the land that may be required for the location and construction of said canal or canals, road or roads, and which may be necessary for the erection of buildings and houses of every description for the residence and accommodation of the engineers, superintendents, and laborers, and all others employed in the making and construction of the said works, or in governing, managing and controlling the same, and also for the erection of all such necessary buildings as may be requisite and proper for the purpose of storing away therein all the tools, machines, materials, and property of every description which may be required for the use in the construction, repairing, preservation, and management of said works, and should any portion of the lands or materials, or of the rivers, bays, ports, or their coasts or lakes, and their shores, which may be necessary and proper to be applied for the location and construction of said works and its appurtenances, belong to individuals, the State of Nicaragua agrees and undertakes to extinguish the titles thereto, and to procure the same upon a just principle of valuation for the aforesaid public works. The aforesaid cession and grant shall include a space of not less than three hundred feet on each side of the lines of said works, and extending all along the whole length thereof, so that ample space be secured on the margins of said works for the convenient use thereof. The just value of such of said lands and materials as may be private property at the date of this treaty will be paid for by said company.

ARTICLE III.

It is agreed that if the Government of the United States shall decide not to undertake and construct the said works, then either the President or Congress thereof shall have the power and authority to frame, enact, and issue a charter or act of incorporation containing such liberal provisions, and such grants of rights and privileges, not inconsistent with the rights of the contracting parties herein secured, as may be necessary, convenient and proper to effect the great objects in view, which charter and act of incorporation shall provide as follows:

1st. That the company which may be formed and organized under and by virtue of its provisions shall be composed exclusively of the citizens of one or both of the contracting parties, who may subscribe for and become the owners of the *whole* of the capital stock required for the said works. If, however, such citizens (thus having the preference) shall fail in due time to subscribe for and become the owners of the whole amount of the said capital stock, the residue thereof not taken by them may be taken, paid in, and owned by the governments of both or either of the contracting parties, or by the governments or citizens of any other nation, kingdom, or country.

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2d. That said company shall have the sole and exclusive right and privilege of constructing and owning such works as are herein named within the State of Nicaragua, provided the same are commenced and prosecuted within the time limited in this convention.

3d. It shall authorize the said company to build and construct said canal or canals, in such directions and of such width and depth as they shall in their discretion determine, and if the plan of roads is in part or in whole adopted the route, width, kind, and number thereof shall be determined upon by the said company as they may think proper.

4th. It shall provide that said company may make contracts, sue, and be sued as a corporation, with a given name and style, have a corporate seal, and engage in all such trade and business as may be proper and convenient in promoting all the operations required for the attainment of the ends in view.

5th. It shall contain provisions adequate for the organization of said company; it shall provide for the appointment of the officers, agents, engineers, surveyors, superintendents, and other employés of said company; and that said company may make and adopt all its own by-laws and regulations, so that the same be not in conflict with the provisions of this convention.

6th. It shall provide that said company may not only build and construct, but also enlarge, alter, repair, and reconstruct the said works as they may think proper, and that they may manage and govern the same and manage and control the financial affairs of the corporation.

7th. It shall provide that the said company shall make annual reports to the executive governments of the United States and the State of Nicaragua, setting forth their receipts and expenditures, and the condition, operations, and affairs of the said company.

8th. It shall provide that the management of the affairs of said company shall be vested and lodged in nine managers, five of whom shall be appointed by the company for a period of time, and in a manner to be regulated by the said charter, and in like manner two of the said managers shall be appointed by the President of the United States and two by the Executive Chief of the State of Nicaragua, and the said nine managers shall appoint their own president.

9th. It shall provide that the governments of either of the contracting parties may, through their committees, freely examine and investigate the affairs, business operations, and condition, financial and otherwise, of the said company, and for such purpose such committees may examine the books and papers of the company, and examine the officers thereof and other witnesses on oath, and make reports thereon to their respective governments.

10th. It shall provide that said company shall have the sole and exclusive right and privilege of conveying persons and passengers, and of conveying all steamers, ships, and vessels of all kinds, by towage or otherwise, and of transporting in the vessels of others or of their own all property, goods, wares, and merchandise, over, through, and upon said navigable waters, canal or canals, road or roads, which shall be improved, made, or constructed by them, at such rates, charges, duties, and tolls as the said company may think proper to establish; except, however, that the said charter shall further provide that all the vessels of war and all other public vessels of every description belonging to the governments of the two contracting parties, as well also as all other vessels which may be engaged in the permanent or temporary employment of the said governments to transport their troops, munitions of war, their public property of all kinds, and to convey their public agents, consuls,

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ministers, and all their officers, civil and military, shall be permitted to have the free and unrestricted use of the said canal or canals and navigable waters, and shall if necessary and required be conveyed through the same by the said company free of all costs and charge; said charter shall further provide also that the public mails of the contracting parties shall be conveyed and transported along and over the said works by the said company, in their own vessels or vehicles, free of cost or charge, and the contracting parties agree and stipulate with all solemnity that the aforesaid rights and privileges shall be enjoyed by each other perpetually, and that said charter shall provide accordingly; said charter shall also further provide that the citizens of the two parties shall enjoy and possess the right and privilege with their vessels, goods, merchandise, and property, and persons to pass and be conveyed through, upon, and over the said canals, roads, and navigable waters on terms at least as favorable as the subjects or citizens of any other nation or country.

11th. Said charter shall provide that the said works shall be commenced by said company within ten years after it shall be fully organized under said charter, or otherwise forfeit their privileges; so likewise if they shall after said works are begun declare their intention to abandon them and cease to prosecute the same for four entire successive years intentionally.

ARTICLE IV.

The charter aforesaid may contain such other provisions and grants of rights and privileges not in violation of or in conflict with any of the preceding or subsequent articles of this treaty as may be deemed necessary, convenient, or proper for the objects in view by either the President or Congress of the United Sates, and the same when framed and issued shall be approved and legalized by the Government of the State of Nicaragua, and no privileges or emoluments shall be granted in said charter to either of the contracting parties which shall not likewise be held and enjoyed to the same extent by the other.

ARTICLE V.

The Government of the United States shall have the right to erect such forts and fortifications at the ends and along the lines of said works, and to arm and occupy the same in such manner and with as many troops as may be deemed necessary by the said government for the protection and defense thereof, and also for the preservation of the peace and neutrality of the territories of Nicaragua, to whom pertains equal rights as inherent to her sovereignty.

ARTICLE VI.

The public armed vessels, letters of marque, and privateers, and the private merchant and trading vessels belonging either to the governments, or the subjects, or citizens of nations, kingdoms, or countries with which either of the contracting parties may be at war, shall not, during the continuance of such war, be suffered or allowed to come in the ports at the terminations of said canals nor be allowed to pass on or through the same, on any account whatever; neither shall the vessels of neutral nations, whether public or private, be allowed to convey by means of said canal articles contraband of war, to or for the enemies of either of the contracting parties, or to or for other nations or states who may be

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at war with each other; nor shall the vessels of countries which are engaged in war with each other, owned or employed and armed by them to carry on such war, during the continuance be allowed to pass through the said canals. The public and private vessels of all nations, kingdoms, and countries which are in peace with both the contracting parties and with each other shall be permitted to enter said ports, and to pass or be conveyed through the said canals, but they shall be subject, however, to the payment of such duties, charges, and tolls as may be established by the proprietors of the said works.

Article VII.

The State of Nicaragua may, of course, exercise her right of erecting and establishing anywhere on the routes or margins, or at the points of termination of said works, custom-houses and warehouses, and to collect duties, according to her own laws, upon the goods, wares, and merchandise imported for sale or consumption into her territories by means of said works, and the State of Nicaragua may adopt and enforce all needful rules and regulations to prevent smuggling or the introduction of contraband goods in her territories; but it is expressly agreed that the State of Nicaragua shall not impose, enforce, or collect any taxes, charges, or duties of any kind or amount on the persons (for passports), or property, or on goods, wares, or merchandise of any class or kind on their travel or transit over, or for passing through her territories by means of said canals, roads, &c., provided the said property, goods, wares, and merchandise shall be not sold or not introduced for sale or consumption into the said State, but be exported to other states or countries.

Article VIII.

The ports at the points of termination of said works shall be free to both the contracting parties and their citizens, respectively; and their public and private vessels of all kinds shall enter and remain therein and depart therefrom and not be subjected to the payment of any port charges, tonnage duties, or other imposition whatever.

Article IX.

The persons employed in the location and construction of said works, the owners thereof, and all their agents, and officers, and employés of every sort, shall be under the special protection of the governments of both the contracting parties, and they shall not be subject to any kind of taxation on their persons or property, nor shall they be required to pay any contributions or to perform any civil or military duty or service whatever for either of the two governments during their employment about the said works; and all provisions, including wines and liquors, and all merchandise imported into Nicaragua for their clothing and subsistence shall be free and exempt from all duties and taxes, direct or indirect; and all such articles, property, stores, tools, implements, and machines, &c., &c., as may be required for surveys and explorations, and for locating and constructing said works, shall be imported into the State of Nicaragua free from all taxes and duties whatever thereon, and the vessels employed in the importation of the said subsistence, clothing, tools, implements, &c., &c., shall also be free and exempt from all port charges and tonnage duties in all the ports, rivers, lakes, or harbors on the coasts or within the limits of the State of Nicaragua; and entire

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liberty is to be enjoyed by the said company to make full and complete surveys and explorations of the ports, bays, seas, lakes, rivers, and territories of Nicaragua, in order to the location of said works and for the procurement of lands and materials necessary for the same, in which explorations and surveys Nicaragua, at her own expense, may participate, if she thinks proper.

ARTICLE X.

The State of Nicaragua grants and cedes to the United States or to a company to be chartered as herein provided, as the case may be, all the land within two leagues square belonging to the said State, and which may be unappropriated at the date of this treaty, at each point of the terminations of said works at the seas on each side, that is to say, three miles square on each side of both ends of said works, to serve for the sites of two free cities which it is anticipated will hereafter be established at said points, the inhabitants of which free cities shall enjoy the following rights and immunities:

1st. They shall govern themselves by means of their own municipal government, to be administered by officers, legislative, executive, and judicial, chosen and elected by themselves according to their own regulations.

2d. They shall have the right of trial by jury in their own city courts.

3d. They shall have the most perfect freedom of religious belief and of religious worship, public and private.

4th. They shall not be required to pay any tax upon their real estate or other property except such as may be imposed by the municipality and collected for the city treasury, and to be used and applied for the benefit of said cities.

5th. They shall not be required to perform any military services, except for the defense of the said cities in which they may reside.

6th. The said cities will of course be under the qualified dominion and government of the State of Nicaragua, not to be exercised in any manner, however, in violation of their rights and immunities as herein specified; and said free cities shall be under the protection of the governments of both the contracting parties.

ARTICLE XI.

The State of Nicaragua agrees that the United States shall have, possess, and enjoy forever the following rights and privileges; that is to say, the right and privilege to pass, convey, transport, and send through all or any part of the territories and dominions of the State of Nicaragua, on land or water, from ocean to ocean, by means of her ports bays, rivers, lakes, and roads, troops, infantry or cavalry, all kinds of arms, artillery, and munitions of war of all kinds, her public property of every description, public officers, civil and military, consuls, ministers, dispatch agents, her public mail and mail agents, and all other employés of the Government of the United States of America; and the same shall all and each be permitted to pass, be sent, and be conveyed through said State, in any manner, as aforesaid, in the public armed vessels of the United States, and in all such other vessels or vehicles, public or private, which may be in the temporary or permanent employment of the Government of the United States for any of the purposes aforesaid, or in any other way, free from all cost and exempt from all taxes, duties, imposts, charges, or exactions of any kind whatever, either on the persons, property, vehicles, or vessels aforesaid; and all the

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aforesaid privileges and the said free right of way and of transit shall be held, used, and enjoyed by the United States of America (but not by any other nation, state, or government, except Nicaragua) without cost or charge, and freely, whether the same be made through the dominions and territories of Nicaragua as they now exist, or whether the said troops, munitions of war, public officers, agents, employés, mails, public property, vehicles, and vessels, &c., shall be sent, transported, or conveyed by means of improved navigable rivers, canals, or turnpikes, or railroads, or any other public improvements which may be hereafter made in the State of Nicaragua, either by the governments or citizens of the contracting parties, or by the governments, citizens, or people of any other nation, kingdom, or country; and the citizens of the United States shall have and enjoy all the rights and privileges of travel, passage, transit, and conveyance for themselves and their property and vessels of all kinds through the territories and dominions of the State of Nicaragua as they now exist or through such canals or roads, railways or turnpikes, or other improvements as may be hereafter made in said state, upon terms and conditions in every particular as favorable as those enjoyed by the citizens of Nicaragua, or by the citizens of any other nation, kingdom, or country.

ARTICLE XII.

In consideration of the premises as set forth in the foregoing eleven articles, the United States of America doth solemnly agree and undertake to protect and defend the State of Nicaragua in the possession and exercise of the sovereignty and dominion of all the country, coasts, ports, lakes, rivers, and territories that may be rightfully under the jurisdiction and within the just and true limits and boundaries of the said state; and when the circumstances and condition of the country may require it the United States shall employ their naval and military force to preserve the peace and maintain the neutrality of the said coasts, ports, lakes, rivers, and territories, and to hold and keep the same under the dominion and sovereignty of the Government of the State of Nicaragua or of the government of such state or political community of which Nicaragua may voluntarily become a member, or with which, of her own accord, she may hereafter be identified: Provided, however, that the said sovereignty and dominion of the State of Nicaragua, so guaranteed as above, shall not be held, maintained, or exercised by said state in any such manner as to conflict or to be inconsistent with the rights and privileges herein secured to the United States and her citizens; and to prevent all misunderstanding, it is expressly stipulated that the United States are not bound, nor do they undertake, to aid, assist, or support Nicaragua in offensive wars or wars of aggression waged and carried on by said state with foreign powers or with the neighboring states, outside of her just limits, and beyond the territories rightfully within her jurisdiction; but the contracting parties agree and undertake that, if necessary, the naval and military forces and the entire means and resources of both the contracting parties shall be employed to put down all wars and bloodshed arising therefrom, and to suppress all violations of the peace and interruptions of the neutrality of the said State of Nicaragua; and for further explanation it is understood that if the State of Nicaragua should become involved in a war with any foreign power or neighboring state within her own borders, to defend the territories rightfully belonging to her, or to recover such territories wrongfully wrested from her, the United States engages to defend Nicaragua in carrying on such war within her own rightful limits, provided, how-

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ever, that such war is just, and provided, moreover, that if peace is prevailing in the State of Nicaragua, no wars or hostilities shall be first commenced in said state by either of the contracting parties without previous friendly consultations, and unless with the consent of both their governments, given according to their laws and constitutions, respectively.

ARTICLE XIII.

The contracting parties, in negotiating this treaty, have had in view the contract entered into between the State of Nicaragua, through their commissioner, José Trinidad Muños, and a certain company styled "Compania de transito de Nicaragua," composed of certain persons named Willard Parker, Simeon H. Ackerman, Asher Kurshecdt, and David J. Brown, through the said David J. Brown as their agent, which contract was executed and signed by said commissioner and agent on March 14, 1849, and ratified by the legislative power of the State of Nicaragua on March 16, 1849, and approved by the executive power of said state on the 17th of March, 1849. Now, in view of this contract, it is further agreed as follows:

1st. If the above-named company shall accede to this treaty *in all its parts*, or if they shall voluntarily abandon their contract, or if they shall forfeit their rights under said contract by failing to perform and execute the terms and conditions thereof in due time, then this treaty shall remain and be valid in all its parts.

2d. But if the said company shall not accede to this treaty *in all its parts*, and if they shall not abandon or forfeit their said contract, but if they shall execute the same and comply with its terms, and build the said works all in the time required, then, in such case, this treaty in all its parts, wherein the State of Nicaragua grants to the United States, or to a company to be chartered by the President or Congress thereof, the exclusive privilege to be the constructors and owners of said works, shall be void, and of no force or effect.

3d. Nevertheless, in such case as is set forth in the second section next preceding, if said company shall accede to the fifth (5th), the sixth (6th), the eighth (8th), and the eleventh (11th) articles of this treaty, and shall consent and agree that the United States of America, and the citizens thereof, shall have and enjoy all the rights and privileges therein granted to them, and as defined also in the tenth (10th) section of the third (3rd) article, then in such case the above-named fifth (5th), sixth (6th), eighth (8th), and eleventh (11th) articles of this treaty, as also the twelfth (12th) article thereof, shall be valid and obligatory between the contracting parties.

4th. But if in such case existing as is set forth in the second section above the said company shall refuse to accede or agree to the said fifth (5th), sixth (6th), eighth (8th), and eleventh (11th) articles hereof, as specified in the preceding third section, then this treaty shall be altogether void and of no force or effect whatever.

But the contracting parties, anticipating that said company, being satisfied that the great enterprise in view cannot succeed unless under the protection and patronage of the two governments, will concur and co-operate with them in the promotion thereof, they are assured that this treaty will meet their cordial approbation, and that it will be fully acceded to by them.

The present special convention between the United States of America and the State of Nicaragua shall be approved and ratified by the President of the United States of America, by and with the advice and con-

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sent of the Senate thereof, and by the Director of the State of Nicaragua, with the consent of the Legislative Chambers thereof, and the ratifications shall be exchanged in the city of Washington, Santiago de Managua or Leon, within the term of two years counting from this date.

In faith whereof, we, the plenipotentiaries of the United States of America and of the State of Nicaragua, have signed and sealed these presents in the city of Guatemala, on the twenty-first day of June, in the year of our Lord, one thousand eight hundred and forty-nine, in the seventy-third year of the independence of the United States of America, and in the twenty-eighth year of the independence of the State of Nicaragua.

[SEAL.] ELIJAH HISE.
[SEAL.] BUENAVA SELVA.

14.—*Contract between Nicaragua and the American Atlantic and Pacific Ship-Canal Company, signed at Leon, August 27, 1849, containing the grant which was subsequently accepted under Article VII of the Clayton-Bulwer Treaty.*

The Supreme Director of the State of Nicaragua, and "The American Atlantic and Pacific Ship-Canal Company," composed of Cornelius Vanderbilt, Joseph L. White, Nathaniel H. Wolfe, and their associates, being always citizens of The United States, desiring to settle the terms of a contract for facilitating the transit across the Isthmus of Nicaragua from the Atlantic to the Pacific Oceans, by means of a ship-canal or railroad, have appointed as Commissioners on the part of the Supreme Director of the State of Nicaragua, Messrs. Hermenegilda Zepeda and Gregorio Juares, and on the part of the said company Mr. David L. White, with full powers to arrange and conclude a contract for the above-named purposes; which Commissioners having exchanged their respective powers, have agreed upon and concluded the following Articles:

ART. I. The State of Nicaragua grants to the said Company the exclusive right and privilege of constructing a ship-canal across its territory, by a single route, and at its own expense, from the port of St. John's of Nicaragua, or any other more feasible point on the Atlantic, to the port of Realejo, Gulf of Amapala, or Fonseca, Tamorinda, St. John's of the South, or any other point on the Pacific Ocean which the engineers of the Company may decide upon, by means of the St. John's river, Lake Nicaragua, River Tipitapa, Lake of Leon, or any other rivers, lakes, waters, and lands situated within its territory, with the object of connecting the two oceans, and to make use of, for its construction and navigation, said rivers, lakes, waters, and lands, both public and private. And the State also grants to the Company the exclusive right to the administration, management, and control of the said canal, according to the following Articles:

II. The dimensions of the canal shall be such as may be necessary for the passage of vessels of all sizes, and the point at which it shall terminate on the Pacific, in the event that the engineers of the Company shall decide upon two or more points as equally practicable, shall be that one most consistent with the mutual interests both of the State and the Company.

III. The Company binds itself to construct, at its own expense, in the harbors at the extremities of the route of said canal, custom-house buildings of the necessary capacity for the use of the State and Company.

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IV. The exclusive rights and privileges herein granted to the said Company by the said State, shall be enjoyed by the same for the fixed period of 85 years, counted from the day in which the canal shall be completed and put in use.

V. The Company hereby agrees to pay to the said State for the said grant the following sums of money, namely:

First. Ten thousand dollars by draft on the said Company in the city of New York, as soon as this contract shall be ratified by the Legislature of the State.

Second. Ten thousand dollars at the expiration of one year from this same date; and 10,000 dollars each year thereafter until the completion of the said canal; the above sums to be paid to the State in the city of Leon, or in the city of New York, as the State may elect. Also the said Company makes a free donation to the said State of 200,000 dollars of stock in the enterprise, which shall be delivered to the State as soon as the certificates of stock shall be distributed by the Company.

VI. Said State shall receive for its proportion of the income of said canal, after the same shall be put in use, the following interests, namely: for the first 20 years, 20 per cent. annually out of the net profits, after deducting therefrom the interest of the capital employed in its construction at the rate of 7 per cent. per annum, and 25 per cent. each year thereafter out of said net profits, after deducting the said 7 per cent., until the expiration of the full period of the term hereinabove granted. And the State shall also receive 10 per cent. out of the net profits, without any deduction of interest, of any route which the Company may establish between the two oceans, whether it be by railroad, or carriage-road, or by any other means of communication, during the 12 years herein granted for the construction of said canal.

VII. The said Company shall be bound to make and present an annual report and account to the Government of Nicaragua, setting forth the receipts and expenditures, as well as a statement of the condition of the works of the canal; which report shall be certified by the proper officers of the Company. The State, however, shall have the right, through any Commissioners which it may appoint for that purpose, to inspect and examine at any time the books of the Company, to satisfy itself of the correctness of the said receipts and expenditures.

VIII. It is hereby stipulated that the State of Nicaragua shall have the privilege of taking stock in the said canal, to the amount of 500,000 dollars, within 1 year from the date of the ratification of this contract, which it may distribute, as it may deem proper, among any of its native citizens, or the citizens of the adjoining States, upon giving notice to the Company of such intention through The United States' Consul in the city of Leon.

IX. It is further stipulated that a majority of the stock of said canal shall always be owned by citizens of The United States; in evidence of which the stock-books of said Company shall always be open to inspection at the principal office of the Company, wherever the same may be located.

X. The Company binds itself to commence the preliminary surveys for said works within the period of 12 months from the date of the ratification of this contract, and also to complete the said canal within 13 years from the same date. But if any fortuitous or unforeseen events, beyond the control of the Company,—as for example, earthquakes, epidemics, wars, or any other events of this nature,—should appear during the progress of the work to suspend its execution, the time thus lost

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shall not be reckoned as a part of the stipulated time above given for its completion. In case such event should occur, the Company shall give immediate notice to the Government of the same, for the purpose of deciding, in connection with the Company, upon the nature of such event.

XI. If none of the events which are expressed in the preceding Article should occur, and the work shall not be completed within the said period of 12 years, then, whatever may have been done by the Company to that time in the prosecution of the work, shall be forfeited to, and become the property of, the State without any indemnity.

XII. The State gives to the said Company the right to take, free of any charge or indemnity, any of the public lands or forests within the State, all the wood, stone, lime, timber, or any other materials which it may require for the construction and use of said canal and its dependencies. And the said State hereby further gives to the Company the right to take and make use of such portions of the public lands as it may require for the establishment or erection of houses, stores, docks, wharfs, stations, and all other useful objects connected with the works of said canal.

XIII. In case the Company shall require any materials, such as wood, lime, stone, &c., which may be found in or upon the lands of particular individuals, it shall be obligated to pay for the same at such price as may be agreed upon between the Company and such individuals. But all the lands which may be required for the passage of the canal in its entire route, shall be at the expense of the State, and the Company shall not be liable to pay any indemnity for the same.

XIV. All the articles that the Company may require, both for the surveys and explorations, and for the construction and use of the works of the canal, such as machines, instruments, tools, &c., and all other necessary materials, shall be admitted into the State free of duties of all kinds, and may be discharged in any of its harbours, or at any other point within its territory that the Company may select; in this last case, however, giving notice of such intention to the proper Government officer. But the Company shall have no right to introduce within the territory of the State any goods, merchandize, or any other articles of commerce for sale or exchange without paying the duties established by law. And they are also prohibited from importing any articles or materials, which may be monopolised or prohibited by the State, for any purpose, except for the use of the works of the canal.

XV. The State binds itself to facilitate and aid in every possible way the engineers, contractors, employés, and labourers who may be employed in the explorations and surveys of the route, and in the construction of the works of the canal; and to this end stipulates that all citizens of the country who may be so employed by the Company, shall be free and exempt from all civil or military service of the State whatsoever; but to entitle them, however, to the right of exemption from such military service, they shall have been previously in the employ of the Company, for at least the period of 1 month. The State also guarantees to all foreigners who may be employed on the works of the canal the same rights, liberties, and privileges as are enjoyed by inhabitants of the country; and also that they shall not be molested or disturbed in their labours while thus employed, by any internal commotions or disorders of the country; and at the same time that they shall be free and exempt from all taxes, duties, or direct contributions whatsoever during the time they may be in the Company's employ.

XVI. The said Company agrees to receive from the State as labourers upon the works of the canal any convicts who may be capable of labour,

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upon such terms as may be agreed upon between the Company and the State.

XVII. The said Company agrees to transport across the said canal all passengers, goods, merchandize, and materials of every description which may be intrusted to it; and also stipulates that the canal shall be open to the transit of vessels of all nations, subject to fixed and uniform rates of tolls that may be established by the Company.

XVIII. The Company shall establish a tariff of fees or tolls for the transportation of all passengers, goods, wares, merchandize, and property of every description, and for vessels of all kinds passing through or along the said canal, which shall have the force of law from the moment in which it shall be communicated to the Government of Nicaragua, which shall be obliged to sanction the same within 8 days after its reception; and at the same time, with a view to induce the largest and most extended business by this route, the said Company agree to fix the said tariff of fees or tolls for the same, at the lowest possible rate consistent with the mutual interests, both of the State and the Company; and in case that the Company should determine at any time to alter such tariff, it shall be incumbent upon it to give 6 months' previous notice of such determination in the State paper of Nicaragua and in the principal seaport towns of The United States.

XIX. The rate of tolls and charges for the transit of the products and manufactures of the State of Nicaragua and the adjoining States shall be regulated by a particular and more favourable tariff, which shall be agreed upon between the State and the Company.

XX. The State grants to all steamers and vessels of the Company during the continuance of this contract, the right of ingress and egress to, from, and through all its harbours, rivers, and waters both on the Pacific and Atlantic Oceans, and the interior, and the use of the same free of all duties or charges of any kind whatsoever, as, for example, anchorage, tonnage, &c.

XXI. The State hereby stipulates that all vessels and steamers of the Company, and also all goods, merchandize, manufactured articles, or any other property which may be conveyed therein passing through the said canal from one sea to the other in either direction to any foreign country, shall be free and exempt from all kinds of Government duties or taxes whatsoever, and shall also be secure and protected from all interruption or detention in their course on the part of the State.

XXII. The Company shall furnish to the State annually a list of all its vessels employed in the navigation of the route, containing the names and descriptions of each of such vessels, which shall be registered in the archives of the State, and thereupon the State shall give to the Company a separate certificate of the register of each one of the said vessels, signed by the proper officer of the Government, which certificate shall serve always as a passport for said vessels through all the harbors of the State, upon presenting the same to the custom-house or harbour officer.

XXIII. The exclusive right which the Company has acquired by this contract of navigating the said lakes, rivers, and waters of the said State by means of steam vessels, from one sea to the other, is understood as not to exclude the natives of the country from free interior navigation by means of sailing, or any other vessels, excepting steam-vessels.

XXIV. The Company binds itself to transport by the said canal, on board of any of its vessels, all the principal officers of the Government and its subalterns, in case of Government necessity, from one point of

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said route to any other one at which said vessels may stop, without any charge to the State therefor.

XXV. The Company is to convey by any of its steamers or vessels, free of cost or charge over the route of the said canal, all the official correspondence of the State, in consideration of which the State agrees not to collect or recover any postage or duties of any kind upon any of the correspondence of the said Company.

XXVI. The Company binds itself to construct, at its own expense, bridges upon that part of the canal that may be made between the lakes and the Pacific, upon such principal highways as may be agreed upon between the State and the Company. The said State, with the consent of the Company, shall establish rates of toll or charges upon such persons or things as may pass over said bridges, the profits from which shall be appropriated to redeem the capital invested in their construction, and the interest thereon, at the rate of 7 per cent. per annum; and when such capital and interest shall have been reimbursed to the Company, then the profits shall be divided equally between the State and the Company for the remaining period of this contract, but such bridges shall continue under the control and management of said Company.

XXVII. The State of Nicaragua, with the object of facilitating the colonization of the lands contiguous to the River St. John, and the adjacent rivers, and of the canal which in or along it may be constructed, makes a free donation to the Company of 8 stations or sections of land to be located at such points upon either one or both of the banks of the said river or canal as the company may elect, each one of which stations shall be of 6 English miles in length, fronting upon the river or canal, and 6 miles in width, measured from the bank of the canal or river towards the interior. And the State further grants to the Company the right of alienating the lands which compose said sections to settlers, or any other person or persons who may wish to locate themselves upon the same. Said sections of land are granted upon the following conditions:

1. They shall be located by the Company in such a manner that they shall be at least 3 English miles distant from each other.

2. That no one of them shall be located within the distance of 4½ English miles from the mouth of the St. John's river.

3. The State reserves to itself the right to such points as shall be necessary for its military fortifications and public buildings.

4. That the lands granted shall not be alienated to settlers until 6 months after the commencement of the survey of the route of the said canal.

5. The State reserves to itself the supreme dominion and sovereignty over said lands and their inhabitants.

6. That said lands shall not be alienated by the Company to any Government whatsoever.

XXVIII. The colonies which the Company may establish upon said lands shall be colonies of Nicaragua, and thereupon the settlers shall be subject to the laws of the State the same as the natives of the country, being, however, exempt for the term of 10 years from all taxes and direct contributions, and from all public service, as soon as each colony shall contain at least 50 settlers.

XXIX. The State further agrees that in case any event may hereafter occur, as named in the preceding Article X, to suspend or prevent the construction of the canal, or if the said contract shall become forfeited, or annulled by either or both of the parties, and also in case the said

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contract shall continue in force for the full period of 85 years, mentioned in the preceding Article IV, the said State shall always acknowledge as private property the lands which may have been alienated or ceded by the Company to settlers or other persons in virtue of the legal title which the Company has acquired by this contract to the said lands.

XXX. The Company shall have the exclusive right to construct rail or carriage roads, and bridges, and to establish steam-boats and steam-vessels on the said rivers and lakes as necessary accessories to and in furtherance of the execution of the canal; but the Company hereby stipulates and agrees that in case the construction and completion of the said canal or any part of it becomes impossible by any unforseen event or insurmountable obstacle of nature, to construct a railroad or rail and carriage road, and water communication between the two oceans, provided the same may be practicable, within the same period as is stipulated for the building of the said canal, and subject to the same terms, conditions, regulations, and restrictions, as far as they can be made applicable to the same.

XXXI. The State hereby binds itself not to sell or dispose of any of its public lands located upon or near the River St. John's, or upon or near any of the routes or points designated in Article 1 of this contract, until after the surveys shall have been made, and the route determined of the said canal.

XXXII. The State also binds itself to protect and defend the Company in the full enjoyment of the rights and privileges granted in this contract, and also binds itself not to contract with, or cede to, any Government, individual, or companies whatsoever the right of constructing a ship-canal, railroad, or any other communication across its territory between the two oceans, or the right of navigating by means of steam-vessels any of its rivers or lakes which may be occupied by this Company while this contract continues in force. But, should this contract become forfeited or annulled, then the State shall be privileged and free to contract with any other individuals or companies as it may deem proper.

XXXIII. In case any dispute or controversy shall arise, during the existence of this contract, between the State and the Company, the same shall be determined by a reference to 5 Commissioners, to be chosen in the following manner, viz., 2 to be named on the part of the State, 2 named by the Company, and the fifth to be selected by the 4 thus appointed, who shall hear and determine the matters in controversy, and decide upon the same; which decision of the said Commissioners shall be final and without appeal, and binding upon both the State and the Company.

XXXIV. It is further provided, that in the event of the 4 Commissioners thus chosen not being able to agree upon the selection of the fifth, the State and the Company shall then choose 3 individuals, out of which number they shall select one to act as such fifth Commissioner; but should they disagree in such selection, then the choice shall be made out of said number by lot.

XXXV. After the period of the 85 years herein granted to the Company shall have expired, the Company shall surrender to the State the canal or roads, and its dependencies, revenues, and privileges, free from all indemnity, for the capital which may have been invested in the said work. But it is nevertheless stipulated that the Company shall receive 15 per cent. annually out of the net profits of the canal for the period of 10 years after such surrender, provided the cost of the same shall be less than 20,000,000 of dollars; but should the cost be 20,000,000 of dol-

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lars or more, then the Company shall receive said 15 per cent. for the period of 20 years after such surrender.

XXXVI. It is expressly stipulated on the part of the State of Nicaragua that the vessels, products, manufactures, and citizens of all nations shall be permitted to pass upon the proposed canal through the territory of the State, subject to no other or higher duties, charges, or taxes than shall be imposed upon those of The United States; provided always, that such nations shall first enter into such Treaty stipulations and guarantees respecting said canal as may hereafter be entered into between the State of Nicaragua and The United States.

XXXVII. It is finally stipulated that this contract, and the rights and privileges which it confers, shall be held inalienable by the individuals composing the Company herein named and their associates; and that it shall never, in whole or part, be transferred or assigned to any other Company, nor in any way become dependent upon or connected with any other Company, whatever may be the objects of the same.

XXXVIII. The present contract shall be ratified by the Legislature of the State in the shortest possible period; and on the part of David L. White shall be ratified immediately after, as agent of the Company which he represents, in virtue of the powers conferred on him to this effect.

In testimony of which we, the respective Commissioners, have signed and sealed the present contract in triplicate, in the city of Leon, in the State of Nicaragua, the 27th day of August, in the year of our Lord 1849.

(L.S.) HERMEND. ZEPEDA.
(L.S.) GREGORIO JUARES.
(L.S.) DAVID L. WHITE.

15.—*Mr. Crampton to Lord Palmerston.*

WASHINGTON, *September 15, 1849.* (Received October 3.)

MY LORD: Mr. Clayton having requested me to call upon him at the Department of State, said that he wished to converse with me frankly and confidentially upon the subject of the proposed passage across the isthmus, by way of Nicaragua and the River San Juan, with regard to which he had long felt a great deal of anxiety—an anxiety lately very much increased by intelligence he has received from Mr. Elijah Hise, who has arrived at Washington from Guatemala, where he has been for some years chargé d'affaires of the United States.

Mr. Hise has, it appears, upon his own responsibility, and without instructions either from the late or from the present administration, signed, on the part of the United States, a treaty with the state of Nicaragua, by which the latter grants to the United States an exclusive right of way across her territories, including therein the River San Juan, for the purpose of joining the two oceans by a canal across the isthmus. The treaty contains a number of provisions, such as stipulations for the construction of forts and military works upon the banks of the San Juan for the protection of the proposed passage. These Mr. Clayton enumerated to me; but he read to me, at length, the article which he regards as the most objectionable in the treaty, by which it is stipulated that the United States guarantees to Nicaragua forever the whole of her territory, and promises to become a party to every defensive war in

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which that state may hereafter be engaged for the protection of that territory.

To the whole of this treaty, as well as to the "absurd stipulation" which he had just read, Mr. Clayton said that it was scarcely necessary to remark that he was entirely opposed. His views and wishes with respect to the construction of a canal across the isthmus by way of Nicaragua were, he observed, known to me, and had been, as I was aware, communicated by his direction to Her Majesty's Government; these would, he trusted have convinced your lordship that the Government of the United States have no views of exclusive advantage to themselves in this matter. He felt most anxious that the signature of the present treaty by Mr. Hise should not produce a contrary impression in any quarter; and with this view he proceeded to read to me a portion of the instructions which have been given to Mr. Squier, who has been lately sent as United States chargé d'affaiers to Nicaragua. By these Mr. Squier is directed not only not to negotiate any treaty with that government on the subject of a passage across the isthmus, but not to give his support or countenance to any contract entered into by private citizens of the United States with Nicaragua on that subject, of an exclusive nature, or such as might bring the United States into collision with any other power.

The signature of the present treaty has, Mr. Clayton remarked, placed the Government of the United States in a most embarrassing situation. You know, he said, that the government have no majority in the Senate; you know that the treaty will be called for by Congress; the substance of it, indeed, has already found its way into the newspapers; you are aware of the opinion which, whether right or wrong, is generally entertained in this country of the claim of the Mosquito chief to any part of the territory claimed by Nicaragua; and you can form an idea of eagerness with which the party opposed to the government will avail themselves of the opportunity of either forcing us into collision with Great Britain on this subject, or of making it appear that we have abandoned, through pusillanimity, great and splendid advantages fairly secured to the country by treaty. It will require great caution on both sides, said Mr. Clayton, to prevent the two governments being brought into collision on account of this intrinsically worthless country.

Mr. Clayton concluded by saying that he would immediately send for Mr. Abbott Lawrence, who is now at Boston preparing for his departure for England on the 26th instant, and that he would put him into full possession of the views of the United States Government with regard to this subject. He begged me in the meantime to communicate the substance of what he had said to me to your lordship.

I have, &c.,

JOHN F. CRAMPTON.

Viscount PALMERSTON, G. C. B.

16.—*Mr. Crampton to Lord Palmerston.*

[Extract.]

WASHINGTON, *October 1, 1849.* (Received October 13.)

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Mr. Clayton, nevertheless, yesterday took an opportunity of entering upon the subject with me, with greater earnestness and at greater

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length than on any previous occasion; and I am the more anxious to report accurately to your lordship the substance of his remarks, from the circumstance that the President, who happened to come into Mr. Clayton's room upon other business, on being informed of the subject on which we were engaged, waved all ceremony and joined in our conversation with great frankness, and every appearance of a wish to make proof of the most friendly feeling towards Her Majesty's Government, by evincing a disposition to deal with entire openness with regard to the affair in question.

The junction of the two oceans by a canal, Mr. Clayton observed, was an object so important to the whole of the commercial world, that it was matter for surprise that an attempt had not long since been made to effect it. The increase of population on the western coast of this continent had, however, now rendered it certain that such an attempt would ere long be made. The Government of the United States are strongly in favor of such an undertaking; but they are as earnestly opposed to its execution being made a subject for jealousy, by an attempt on the part of any one nation to monopolize to itself either the credit due to such an enterprise, or the advantages to be derived from it when effected. It should, in their view, be rather made a bond of peace and good understanding, by being brought about by a combined effort, and for the general benefit of mankind.

That great applause in certain quarters, and a certain sort of popularity, might be gained by the government of either of the countries by an attempt to effect this work upon a principle of exclusive advantage, Mr. Clayton observed, there could be no doubt. But the United States Executive disclaimed any such wish, but desired, on the other hand, not to be driven to adopt any measure for obtaining such exclusive advantage. Such popularity or applause would, in their opinion, be dearly bought by the jealousies and misunderstandings between nations which would be the inevitable result; and this it was the study of the United States Government to avert.

The two countries, Mr. Clayton continued, most deeply interested in this work are, there can be no doubt, Great Britain and the United States. Their interest in it, indeed, seemed to him to be identical. Their entire agreement with regard to it was therefore an object of paramount importance.

It was with this feeling, he said, that the United States Government would entirely disapprove of the treaty signed by Mr. Hise with the State of Nicaragua, unless they were driven to adopt it to counteract the exclusive claim of some other country. That treaty both secured exclusive advantage to the United States with regard to the proposed canal which they did not wish, under any circumstances, to possess, and threatened, besides, to bring them into collision with Her Majesty's Government upon the Mosquito question pending between them and the State of Nicaragua.

What the United States Government would now propose, therefore, was this: That the United States should abandon the treaty signed by Mr. Hise; and, instead of ratifying it, should propose, simultaneously with Her Majesty's Government, another treaty to Nicaragua, by which no exclusive advantage should be conferred on any party, and the great object of which should be to guarantee the safety of a company of capitalists, to whom a charter should be granted by Nicaragua on reasonable terms for the execution and maintenance of the work. This company Mr. Clayton would have formed upon no exclusive principle as regards the shareholders, while it should be regulated as regards the

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rate of toll to be levied, and on such other points as might appear necessary, by the governments guaranteeing its safety and undisturbed possession. The Goverment of Nicaragua would of course have no power to levy any other dues than custom duties on articles imported for her own consumption; the transit from ocean to ocean being left free. The sole fact of the existence of such treaties between Great Britain and Nicaragua, and between Nicaragua and the United States, would, in Mr. Clayton's opinion, be quite sufficient to insure the undisturbed execution of the work; but he would propose that every other power which should conclude a similar treaty with Nicaragua, and offer a similar guarantee, should be admitted on equal terms to all the advantages of the canal. It would be by such an arrangement that the character which it ought to possess would be conferred on this great undertaking.

These considerations, if fairly laid before Her Majesty's Government, would, the United States Government are persuaded, induce Her Majesty's Government to consent to make such an arrangement with regard to the Mosquito claim as would prevent its being an obstacle to the design in question. The Mosquito claim, if disconnected with the question of a passage across the Isthmus, is not, the United States Government apprehends, one to which any great importance can be attached by Her Majesty's Government; and they cannot perceive that if the object which they think it probable that Her Majesty's Government, in common with themselves, have in view, of preventing an injurious monopoly being established by any one nation in the quarter in question, is obtained, there can be any real difficulty in arranging the question as far as the Mosquito nation is involved in it.

* * * * * * *

Mr. Clayton then recurred to the embarrassing situation in which the friends of this great enterprise would be placed should Her Majesty's Government continue to oppose the Mosquito claim to the arrangement now proposed. The existence of the treaty signed by Mr. Hise, and the privileges conferred by it on it, by the United States, are, he said, no secrets in the country. The universal feeling would be for its adoption; and a reason for clamoring for its instant ratification would be, that this might defeat what would be represented and believed to be a plan on the part of Great Britain to secure for herself a monopoly of the most eligible passage between the two oceans. The Executive Government of the United States would be without excuse for withholding the treaty from the consideration of the Senate; and it is impossible to doubt, under the influence of the public excitement, which there is already an evident design to rouse with regard to this question, what would be the result. On the other hand, were the administration enabled to submit to Congress an arrangement such as is now proposed, and in which Her Majesty's Government would be in friendly concurrence with the United States Government for this great work, every pretext would be taken away from the most unreasonable, and every chance of future misunderstanding between the two governments avoided. Mr. Clayton considered that this question could never be settled amicably unless both Great Britain and the United States withdrew all claim to the territory of Nicaragua and Costa Rica. If either of the two governments held possession of the country on either side of the canal, it would hold an inadmissible advantage over the other; in a word, said he, let us both abandon all claim to what is called Nicaragua and Costa Rica, and lend the countenance of both governments to the construction of a ship-canal, if it be found to be practicable: if you refuse this offer, we are driven in self-defense to adopt the treaty.

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In the whole of these observations General Taylor cordially concurred; the attempts, he remarked, which were making and would be made in many quarters to produce a misunderstanding or a collision between the two governments on this matter were, in his opinion, only to be met by perfect frankness and fair dealing; it was his earnest wish, therefore, that the matter should be laid in this spirit before your lordship, and he expressed an anxious wish that the question might be promptly arranged equally to the honor and advantage of both countries.

JOHN F. CRAMPTON.

Viscount PALMERSTON, *G. C. B.*

17.—*Mr. Crampton to Lord Palmerston.*

WASHINGTON, *November 4, 1849.*—(Received November 19.)

MY LORD: I had the honor of forwarding to your lordship, with my dispatch of the 15th ultimo, the copy of a contract between an American company and the Government of Nicaragua for the formation of an interoceanic canal by way of the River St. John and the Lakes of Nicaragua, which contract was drawn up under the supervision of Mr. Squier, in accordance with the provisions of the treaty which he was engaged in negotiating with the Nicaraguan Government; and I stated that Mr. Clayton, although he approved of the general tenor of the contract, thought that some of the articles were objectionable from being of an exclusive character, particularly those which require that all directors of the company and a majority of the shareholders shall be American citizens.

Mr. Clayton now informs me that he has had a conference with the two principal directors of the company in question; and that, as he anticipated, he finds that no objection will be raised on their part so to modify the provisions of the contract as to remove from it anything of an exclusive nature.

These gentlemen, Mr. Clayton remarked, far from wishing to adopt any regulations which might have the effect of deterring British capitalists from embarking in this great undertaking, are most anxious to secure their co-operation; for the American capitalists are sensible that without such co-operation there would be but small prospect of the ultimate success of the enterprise.

I have, &c.,

JOHN F. CRAMPTON.

Viscount PALMERSTON, G. C. B.

18.—*Mr. Abbott Lawrence to Lord Palmerston.*

UNITED STATES LEGATION,
November 8, 1849.—(Received November 8.)

MY DEAR LORD: As I told you in our conversation this morning, I have been instructed by the President to inquire whether the British Government intends to occupy or colonize Nicaragua, Costa Rica, the Mosquito Coast, so called, or any part of Central America. I have also been instructed to inquire whether the British Government will unite with the United States in guaranteeing the neutrality of a ship-canal,

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railway, or other communication to be open to the world, and common to all nations. May I beg the favor of an answer to these inquiries, and to express the wish that I may receive it before two o'clock to-morrow, so as to send it out by this week's packet?

I am aware that Nicaragua is in dispute with Costa Rica, on the one hand, about her boundary, and with the Mosquitos, on the other, about their sovereignty. I have no purpose now to enter upon those questions; I only desire to know the views of Her Majesty's Government on the questions I have proposed. At the same time, I cannot but think that Great Britain and the United States can heal these breaches by kind offices; and that the Indians can be provided for in a manner satisfactory to Nicaragua and Great Britain, and far better for them than the equivocal position they now occupy.

I need not assure your lordship that the United States have no ulterior purposes in view. They frankly disclaim all intention of obtaining territory in Central America; and I have no doubt would be willing to mutually agree with Great Britain neither to settle, annex, colonize, or fortify that country.

I have, &c.,

ABBOTT LAWRENCE.

Viscount PALMERSTON, G. C. B.

19.—*Sir Henry Bulwer to Lord Palmerston.*

[Extract.]

WASHINGTON, *January 6, 1850.* (Received January 22.)

Since arriving in this country I have taken some pains to ascertain in what way the questions that have arisen between Her Majesty's Government and that of the United States, with respect to Nicaragua and the kingdom of Mosquito, might be brought to a prompt and satisfactory conclusion. Your lordship is aware that the main interest of the United States in this matter has arisen from its newly acquired possessions in the Pacific, and the project of an American company to form a water communication between the two oceans, passing through the Lake of Nicaragua and the river San Juan; this company having obtained from the state of Nicaragua the use of its lakes and territory for this purpose, and the use also of the river San Juan, to which Nicaragua lays claim.

In this manner the Government of the United States became interested in the pretension of the Nicaraguans, and desires to establish the fact that the river San Juan, ceded by the Nicaraguans to an American company for an object of the utmost interest to America, should be placed at the disposal of the state making that concession. This first interest in the claims of Nicaragua, therefore, proceeds from an interest in the construction of the canal to which I have been alluding.

But it so happens that, while it is very difficult, not to say impossible, for Her Majesty's Government to listen to those claims of Nicaragua, our decision with respect to which has been already openly taken, there is no difficulty, I believe, whatsoever in Her Majesty's Government assisting the United States Government in its general views with respect to that water communication across Central America, which Great Britain must be almost as desirous as the United States to see established. Our great object, therefore, as it has appeared to me, is to dis-

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place the discussion from the claims of Nicaragua and Mosquito, on which it is unlikely that the two Governments of Great Britain and the United States should agree, and bring it to the consideration of the canal, on which it is almost certain that their views will be identical.

Having conversed with several persons of importance, and of different parties on this subject, and with Mr. Clayton himself, I am disposed to think that the best means of doing this is by a convention between Great Britain and the United States, having for its object to facilitate the construction of the desired passage between the Atlantic and the Pacific, upon such terms as, without entering upon the question of the rival claims of Nicaragua and the Mosquitos, would confer upon American commerce all it can desire to obtain in a manner corresponding with the dignity and honor of Great Britain, and the disinterestedness of her protectorate over the Mosquito territory.

H. L. BULWER.

Viscount PALMERSTON, G. C. B.

20.—*Sir H. Bulwer to Lord Palmerston.*

[Extract.]

No. 19.] WASHINGTON, *February 3, 1850.* (Received February 18.)

I should hardly have acted, however, in any formal manner on this consideration alone, but having heard of the very serious illness of Mr. Lawrence, and been informed by Mr. Clayton that if this gentleman recover he will not be able to transact public business for a considerable time, I deemed that I stood in one of those positions in which it is necessary for a public agent to take upon himself a certain degree of responsibility for the sake of the public service; and, consequently, when Mr. Clayton, after informing me of Mr. Lawrence's severe indisposition, and explaining to me the very critical position in which he himself stood, added that he must either deliver up the whole subject to popular discussion and determination, or come to some immediate settlement upon it, I entered with him into a full consideration of the affair, and finally agreed to submit to your lordship's sanction the inclosed project of convention.

In order to make clear the spirit and intention with which the said project is drawn up, I feel it necessary to enter with your lordship into some statement of my own views with respect to the questions out of which it arises, some statement of the causes which have raised these questions into importance, and some explanation of the nature of the solution which I have given to such questions.

It seemed then to me that Her Majesty's Government, after asserting, first by argument, and finally by force, the rights of the King of Mosquito over a particular territory, and driving therefrom the agents of the feeble Government of Nicaragua, could not, at the demand of another power of greater strength, restore to the Nicaraguans that territory from which they had been ejected.

Nevertheless, I was aware that the course which Her Majesty's Government pursued in this case was with a view to the general interests of commerce as well as to those of justice; and that so far from wishing to make the protectorate which Her Majesty exercises over the Mosquito territory, or that territory itself, subservient to the views of any small, selfish, or grasping policy, it would be your lordship's desire to make

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both the one and the other useful, in the widest sense of the term, to the common advantage of mankind and the universal purposes of traffic and civilization.

Such being my conviction and knowledge on the one side, I was equally certain, on the other, that the interests of the United States were only incidentally involved in the question between Nicaragua and the Mosquitos, and mainly referred to another subject, which, though connected with the disputes which have arisen as to the extent of the Nicaraguan territory, admit of a separate adjustment.

The construction of any rail or water communication across that portion of Central America which separates, by a comparatively small distance of land, the two oceans of the Atlantic and Pacific would always have been of great interest to the United States; but since the possession of California and Oregon this interest has indefinitely increased, so that that which was once a question of convenience is now almost a matter of necessity. Thus the various routes by which a railway or canal could open a way between the two seas have, latterly, been under the constant attention of this government; and amongst the most feasible and important of the schemes indicated has been one of a canal, from the port of Realejo, through the Lakes of Nicaragua, to the mouth of the river San Juan.

Now, the state of Nicaragua made to an American company formed for the construction of such a canal, the grant, accompanied by various favors and privileges, of all such portion of the territory claimed by it, as the said company required; and, in the two treaties to which I have already referred, namely, those of Mr. Hise and Mr. Squier, the object of the American agents has evidently been to strengthen the contract which the above-mentioned company had made.

It was, however, impossible for the contemplated scheme to be executed under any grant from the state of Nicaragua as long as the mouth of the San Juan River was in the hands of another people or kingdom, protected by Great Britain; and, moreover, it was generally supposed that the Goverment of Great Britain had placed the Mosquitos in possession of Greytown, expressly in order to get hold of this entrance to the canal passage for itself, and, at all events, to prevent its falling into the possession or being subservient to the views of any other power.

On these grounds has arisen all the excitement here touching the British protectorate of Mosquito, and in this manner the United States has become interested in the dispute between the Nicaraguans and ourselves.

It is indeed most certainly true that if the American company, having the grant of which I have spoken from Nicaragua, had been disposed to carry it out in its original terms, and that if the United States Government had been prepared to accept the exact terms of the treaties made with Nicaragua by their agents it would have been impossible for Great Britain to favor an undertaking which expressly established a monopoly of trade for American citizens through the most important passage (if such a canal as that contemplated can be executed) that the commerce of the world can enjoy; and I cannot consider it unfortunate for the general interest that Her Majesty's Government should have been in a position to make its consent necessary to a work of such universal importance.

But both the American company to which I have alluded and the American Government have latterly manifested an earnest desire to have it clearly understood that they will modify all that portion of their original engagements with Nicaragua which secures any advantages to one state which another may not equally enjoy; and if such be the spirit

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which is to preside over the vast project under consideration Great Britain has not only no interest in preventing its success, but every interest in forwarding its completion and providing for its security.

In this view of the case, the protectorate which Her Majesty exercises over the Mosquitos, instead of being prejudicial to the aforesaid enterprise, may be an essential element in its favor, and all that seemed to be required in order to bring Great Britain and the United States to a perfect understanding is, that both should abandon every particular advantage, the one such as might be derived from the protectorate over the Mosquitos, and the other such as might be derived from any contract or treaty with Nicaragua; and to make the fact that they do so clear and palpable, taking as the basis of their thorough good understanding the construction of that canal which offers benefits common to the two, and dropping as a point of controversy those disputes as to the Nicaragua and Mosquito territory, on which it is next to impossible that they should come to any agreement.

It is with such views that the inclosed convention has been drawn up, its object being to exclude all question of the disputes between Nicaragua and the Mosquitos, but to settle, in fact, all that it was essential to settle with regard to those disputes as far as the ship communication between the Atlantic and the Pacific and the navigation of the River San Juan were concerned.

There are indeed stipulations which extend farther than the mere engagement, on our part, to use our best endeavors to obtain the free transit of this river, inasmuch as that we also in the said convention agree, as do the United States, not to occupy or colonize either Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America; but in consenting to these provisions, I know that I merely carry out the views and opinions of Her Majesty's Government, which have been already expressed on this subject, though in a less formal manner.

I do not pretend to say that the project of convention thus submitted to your lordship's consideration is such, either in its precise terms, arrangements, or enactments, as I should have myself proposed, or, if there had been more time for alteration and discussion, adopted. But it settles the main question immediately at issue, and also establishes a general basis for a common policy and perfect good understanding between ourselves and the United States in that portion of the world which has latterly been the scene of constant suspicions and angry rivalries on the part of our agents, and is, moreover, the record of great and noble views entertained and expressed by two great and kindred nations on one of the works most likely to commemorate our epoch, and to be of the utmost interest and importance to commerce and civilization.

For these reasons, I confess that I send it to your lordship, with the humble confidence that it will, as a whole, meet with your approval.

At all events, I know that it is an arrangement which Mr. Lawrence could hardly have made in England, and that I myself could not have made here except after much preparation and under favorable circumstances.

I may add that it will probably be attacked with violence by the parties who are for supporting Mr. Monroe's famous doctrine at all hazards, and who contend that Mr. Hise's convention is the only one that this country ought to adopt or sanction; but, on the other hand, I think I can promise that it will be duly esteemed and approved of by the Senate, and carry with it the weighty sanction of all reasonable men.

H. L. BULWER.

Viscount PALMERSTON, G. C. B.

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[Inclosure.]

Project of Convention respecting the Isthmus Canal.

The United States of America and Her Britannic Majesty being desirous of consolidating the relations of amity which so happily subsist between them, by setting forth and fixing in a Convention their views and intentions with reference to any means of communication by ship-canal which may be constructed between the Atlantic and Pacific Oceans, by the way of the River San Juan de Nicaragua, and either or both of the Lakes of Nicaragua or Managua, to any port or place on the Pacific Ocean, the President of The United States has conferred full powers on John M. Clayton, Secretary of State of The United States, and Her Britannic Majesty on the Right Hon. Sir Henry Lytton Bulwer, Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty to The United States, for the aforesaid purpose; and the said Plenipotentiaries having exchanged their full powers, which were found to be in proper form, have agreed to the following articles:

ART. I. The Governments of Great Britain and The United States hereby declare that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said ship-canal, agreeing that neither will ever erect or maintain any fortifications commanding the same, or in the vicinity thereof, or occupy or colonize either Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America; nor will Great Britain or The United States assume or exercise any dominion over the same, or take advantage of any intimacy, or use any alliance, connection, or influence that either may possess with any State or people through or by whose territory the said canal may pass, for the purpose of acquiring or holding, directly or indirectly, for the subjects or citizens of the one, any rights or advantages in regard to the commerce or navigation through the said canal, which shall not be offered on the same terms to the subjects or citizens of the other.

II. Vessels of Great Britain or The United States traversing the said canal shall, in case of war between the contracting parties, be exempted from detention or capture by either of the belligerents, and this provision shall extend to such a distance from the 2 ends of the said canal as it may hereafter be found expedient to establish.

III. In order to secure the construction of the said canal, the Contracting Parties engage that if any such canal shall be undertaken upon fair and equitable terms by any parties having the authority of the Local Government or Governments through whose territory the same may pass, then the persons employed in making the said canal, and their property used or to be used for that object, shall be protected, from the commencement of said canal to its completion, by the Governments of The United States and Great Britain from unjust detention, confiscation, seizure, or any violence whatever.

IV. The Contracting Parties will use whatever influence they respectively exercise with any State or States, or with any people possessing, or claiming to possess, any jurisdiction or right over the territory which the said canal shall traverse, or which shall be near the waters applicable thereto, in order to induce such States or people to facilitate its construction by every means in their power. And furthermore, Great Britain and The United States agree to use their good offices wherever or however it may be most expedient, in order to procure the establisment of 2 free ports, one at each end of the said canal.

V. The Contracting Parties further engage that when any such canal shall have been completed, they will protect it from interruption, seizure, or unjust confiscation, and that they will guarantee the neutrality thereof, so that the said canal may forever be open and free, and the capital invested therein secure. Nevertheless, the Governments of The United States and Great Britain, in according their protection to the construction of the canal which this Treaty specifies, and guaranteeing its neutrality and security when completed, always understand that this protection and guarantee are granted conditionally, and may be withdrawn by both Governments or either Government, if both Governments or either Government should deem that the persons or company undertaking or managing the same adopt or establish such regulations concerning the traffic thereupon as are contrary to the spirit and intention of this Convention; either by making unfair discriminations in favour of the commerce of one of the Contracting Parties over the commerce of the other, or by inflicting oppressive exactions and unreasonable tolls upon passengers, ships, or merchandise; neither party, however, shall withdraw the aforesaid protection and guarantee without first giving 6 months' notice to the other.

VI. The Contracting Parties in this Convention engage to invite every nation, state or people, with whom both or either have friendly intercourse, to enter into stipulations with them similar to those which they have entered into with each other, to the end that the whole world may share in the honour and advantage of having contributed to a work of such general interest and importance; and the Contracting Parties likewise agree that each shall enter into treaty stipulations with such of the Central

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American nations, states, or people, as they may deem advisable for the purpose of more effectually carrying out the great design of this Convention; namely, that of constructing and maintaining the proposed ship communication between the 2 oceans for the benefit of mankind, on equal terms to all, and of protecting the same; and they also agree that the good offices of either shall be employed, when requested by the other, in aiding and assisting the negotiation of such treaty stipulations.

VII. It being desirable that no time should be unnecessarily lost in commencing the great undertaking herein contemplated, the Governments of The United States and Great Britain determine to give their support and encouragement to such persons or company as may first offer to commence the same, with the necessary capital, the consent of the local authorities, and on such principles as accord with the spirit and intention of this Convention.

VIII. The Governments of The United States and Great Britain, in entering into the present Convention, have not only desired to accomplish a particular object, but also to establish a general principle; they therefore hereby agree to take under their consideration any project for a canal or railway which may be submitted to them, and which may have for its purpose to connect the Atlantic and Pacific, or to shorten and expedite the transit of persons, ships, or merchandise between the 2 great oceans: and should either of the 2 Governments deem it to be beneficial to the general interests of commerce and civilisation to extend its support, encouragement, or protection to such railway or canal, it will forthwith invite the other of the 2 Governments to be a joint party in affording such protection, support, or encouragement; and will neither request or accept from any persons, company, or state, any advantages or privileges for its own citizens or subjects with respect to such railway or canal which shall not be open for all other Governments to obtain for their citizens or subjects upon the same terms as those which are proposed to or accepted by itself.

21.—*Lord Palmerston to Sir Henry Bulwer.*

FOREIGN OFFICE, *March 8, 1850.*

SIR: I have received your dispatch of the 3d ultimo, in which you state the reasons which had induced you to enter with the American Secretary of State into a full consideration of the questions connected with the proposed plan for establishing a communication between the Atlantic and Pacific Oceans, by a ship-canal, by way of the river San Juan de Nicaragua and the lakes of Nicaragua and Managua; and you inclose the draft of a convention on this subject which has been agreed upon between you and Mr. Clayton, subject to the approval of Her Majesty's Government.

I have to acquaint you that Her Majesty's Government entirely approve of the course which you have pursued in this important affair. You are therefore authorized to sign, on the part of Her Majesty, the convention of which the draft is inclosed in your dispatch above mentioned; and in order to enable you to do so, I transmit to you a full power, which the Queen has been pleased to grant to you under the Great Seal, constituting you her plenipotentiary for this negotiation, or for any other negotiation with the United States that may arise during your mission.

I have also to instruct you to deliver to the American plenipotentiary, at the time of the signature of the convention, a note stating that you have received the express order of your government to declare, with reference to the engagement taken by my letter to Mr. Lawrence, dated the 13th of November last, a copy of which was inclosed in my dispatch to Mr. Crampton of the same date, that the British Government has no intention to make use of the protection which Great Britain affords to the people of Mosquito, for the purpose of doing, under cover of that protection, any of the things the intention to do which is disclaimed in the letter to Mr. Lawrence above referred to.

The exchange of the ratifications of the convention may be fixed to

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take place as soon as possible, either at Washington or at London, as may be deemed most convenient by you and Mr. Clayton.

After the convention shall have been signed and ratified, Her Majesty's Government will be happy to concert with the Government of the United States as to the mode and form in which the engagement contained in Article VI of the draft of convention shall be carried into effect; whether by treaties with other powers, comprising stipulations in harmony with those contained in the proposed convention between Great Britain and the United States, or by treaties of accession. If treaties of accession should be adopted, the convention should be annexed to each of such treaties, accompanied by an engagement to adopt the principles and stipulations therein recorded, so far as they may be applicable to the acceding power.

I am, &c.,

PALMERSTON.

Sir HENRY BULWER.

22.—*Decree of the director of Nicaragua of March 9, 1850, incorporating the American Atlantic and Pacific Ship-Canal Company.*

Whereas the American Atlantic and Pacific Ship-Canal Company should be legally accredited in the state for the exercise of its functions in such a manner as not to meet with any embarrassment in the development and prosecution of the enterprise, and as it is indispensable that the government of the state should grant it all the means which are in its power for this subject: Therefore, in virtue of its faculties, the government has resolved to decree, and does decree, the following act of incorporation:

First. The state of Nicaragua hereby makes, constitutes, and appoints Cornelius Vanderbilt, Joseph L. White, Nathaniel H. Wolfe, and their associates, whomsoever the same may be, now or hereafter, a body politic and corporate with perpetual succession, by the name and description of the American Atlantic and Pacific Ship-Canal Company, for the purpose of carrying into full effect the objects and purposes of the grant and charter heretofore made and given by said state to the aforesaid parties, in such manner and by such means as to them and their successors may seem proper, and not inconsistent with said grant and charter; and for such purpose the aforesaid parties and their successors are hereby invested with all necessary power and authority as a body corporate and politic.

Second. The said body corporate may, from time to time, in any manner which to them may seem proper, pass by-laws and adopt rules and regulations for the management and government of the said body corporate and its business, fix the amount of capital stock thereof, increase and regulate the subscriptions to the same, designate the number of shares and value thereof, define the mode of issuing, and issue the same, and provide for and regulate the manner of transferring the same, by themselves or their officers, and do all other acts and things which to them may seem necessary or proper, fully to execute and carry out the purposes of the said grant and charter.

Third. The said body politic and corporate may, from time to time, as it may determine, select a board of directors, and all other officers, and appoint agents and servants for the management of all the business and affairs of said company, which said board, when elected, as the said body corporate may provide, together with the president, shall be

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invested with all the powers of the said body corporate, unless by the said body the same shall be limited or defined; and the said body corporate may provide by by-laws, or otherwise, for the number of directors, the manner and time of their election, and the duration of their term of office.

Fourth. The said body corporate and politic shall adopt a common seal, and may, from time to time, alter the same, and shall have power to sue and be sued to final judgment, plead and be impleaded, complain, answer, or respond in all the judicial tribunals of this state, to the same extent as a natural person and a citizen of the state.

Fifth. The capital stock of said body corporate, and all of their property, choses in action, rights and effects, shall at all times and forever be exempt from taxation, charge, or other burden or duty whatsoever, on the part of the state.

Let it be communicated to the company by the conduct of David L. White, and to the authorities and functionaries of the state whom it may concern.

Given in Leon, the 9th day of March, in the year 1850.

NORBERTO RAMIREZ,
Supreme Director.

MR. SEBASTIAN SALINAS,
Secretary of Foreign Relations.
SEBASTIAN SALINAS.

23.—*Mr. Lawrence to Mr. Clayton.*

[Extract.]

No. 44.] UNITED STATES LEGATION,
London, April 19, 1850.

SIR: * * * There is on the eastern coast of Central America, between Cape Honduras on the north, and the San Juan River on the south (possibly extending as far even as Boca del Toro), a tract of low, swampy, unhealthy land of a various width, and rising in its western border into highlands and mountains. The lower part of this country has never been much occupied by Europeans in consequence of its insalubrity. The mountainous parts are said to contain but little valuable mineral stores. At the time of the discovery by Columbus, and until within a comparatively recent period, it was inhabited by some fifteen or sixteen tribes of Indians, speaking different languages, and often at war with each other, and, among others, there was a tribe known as the Mosquitos (so called by the early voyagers from the abundance of *moscas* found on the coast), living between Cape Honduras and Cape Gracias à Dios. They gradually overcame and almost exterminated the more southern tribes, aided, perhaps, by the buccaneers, and by degrees the name of Mosquito came to be applied to all living north of the Bluefields, and I think in all the discussions of the last century relating to the subject, the Mosquito country was never understood to extend far, if at all, below the river. It is now defined by Lord Palmerston as reaching to the San Juan River, embracing the northern bank so as to take in San Juan de Nicaragua (anglicized into Grey Town), and command the mouth of the river. In my opinion, it is quite immaterial where the royal geographers are directed to draw the line, as I am satisfied the whole claim is without just foundation. All the good maps of the sixteenth, seventeenth, and eighteenth centuries—

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French, Spanish, Dutch, and English—carry Honduras from coast to coast; Nicaragua the same, and fix the southern terminus of Mosquito shore at or near where I have indicated.

The character of the Indians at present occupying this country deserves notice, since Great Britain seeks to invest them with the attributes of an independent nation.

In the year 1836 one James Woods, a native of Ipswich, in the county of Suffolk, allured by the promises of an emigration company, set sail for Vera Pas. On his return in 1840 he published a sketch of his adventures in Central America to serve as a warning against similar companies. Among other places, he resided a while at Cape Gracios à Dios in charge of a store of provisions, rum, &c., &c. He says:

The rum was a dangerous thing in the store, for the Indians will kill a man for the sake of a glass of rum, and there were only five Europeans on the Cape. I had a demijohn of brandy for the Indian King, but he was gone up the river. He and his brother were taken from the Mosquito shore when young and carried to the Island of Jamaica, where they were taught to read and write the English language. After staying there for several years they were brought back to the Mosquito shore. One was made king, the other a general, and although brought up in a civilized state, yet they returned to the wild and savage state in which their people live, getting drunk and giving themselves up to the most disgusting habits. No sooner had the King heard I had a demijohn of brandy for him than he set out to return home. He went to the house of a Frenchman named Bouchet, who came down to the store and told me His Majesty wished to see me. I went up to the house, where the King was lying on a bed rather unwell. I made my compliments to him, and asked how he did; he told me he was very poorly, and that he wanted me to draw him a gallon of brandy. Accordingly I went down to the store and drew him a gallon, which I carried to him. He asked me to drink, and stay and dine with him, which I did. He told me that he loved me; I replied, you love the brandy better; but I turned it off with a laugh, or he would have been offended with me. He staid for two or three days, and then left for Bluefields. These Indians far exceed all the Indians I have ever met with in lying, thieving, and everything that is disgusting. They are given up to idolatry, and lead an indolent life.

After giving details of their ignorance and barbarism, he adds: "They are also great drunkards, and are never easy but when they are drunk." And of the English settlers on the shores, he says, they "are almost as bad as the natives, and live in almost as disgusting a manner." This strong picture, painted by an Englishman, is borne out by the personal relations of many other travelers.

The historical portion of this paper will relate not to Mosquito alone, but to Central America, from Tehuantepec to Panama. The naval and military operations of the Spaniards were so extensive, their conquests were so complete, and their settlements were so rapid and numerous, that it is impossible to separate the conquest and colonization of that part of Nicaragua and Honduras called the Mosquito coast from the subjugation and settlement of that portion of them to the west of the indefinite line swaying across their interior at the will of the foreign office.

* * * * * * *

I am left, therefore, in this connection, only to show that Spain *discovered* Central America and *occupied* it. I believe that she did much more: that she discovered, circumvallated, explored, conquered, settled, retained possession of, and governed it, with only such interference as the rudeness of the times permitted, or rather could not prevent.

The principal authorities for the early history of Central America are Oviedo, Peter Martyr, Gomara, Encisco, Cortes, Las Casas, Herrera, Torquemada, Remesal, Cogulludo, Wytfleit, De Saet, Ogilby, Villagutierre, Sanson, Moll, Jefferys, Navaretto, Juarros, Linschot, Boterro, Hakluyt, Purchas, Alcedo, &c., &c. I have caused all these to be carefully

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examined and compared with many other writers, Spanish, English, Dutch, and French. The following facts are derived chiefly from the above sources:

Columbus in his fourth voyage first made land on the North American continent at Cape Honduras, near the present town of Truxillo, on the 17th of August, 1502, and thence proceeding easterly, shortly afterwards entered the mouth of Black River, and in accordance with his instructions landed and took formal possession of the country, in the presence of the unresisting natives, in the name of the crown of Castile. In the early Spanish maps this river is called the Rio del Possession, a name given to it by Columbus himself in commemoration of this event. He next touched and took possession at Cape Gracios à Dios, where he remained a short time, holding friendly intercourse with the natives, whom he described more favorably than he did their country. Thence he coasted leisurely southward toward Veragua, communicating often with the inhabitants, and touching particularly at the Bluefields River, and at the mouth of the San Juan.

The results of this voyage being known in Spain, expeditions were fitted out at different times under various commanders, which reconnoitered thoroughly the entire coast from Darien to the Bay of Honduras, penetrating even to the extremity of Gulf of Dolce, and thence along the coast of Yucatan. Much intercourse was held with the natives, and every river and bay was penetrated to find the supposed strait to the land beyond the Ganges, for this country was then believed to be an island, or part of India, and the Spaniards were not fully disabused of the idea until the discovery of the Pacific by Balboa in 1512. After this event expeditions sailed from year to year along both the Atlantic and Pacific coasts, with the double purpose of discoving the supposed passage connecting the two oceans, and of exploring, conquering, and settling the country, and so rapidly were the latter objects accomplished that by the year 1530, not only the Pacific coast from Panama to the Gulf of Fonsecas had been reconnoitered, but the interior from Tehuantepec to Veragua had been crossed and recrossed; many tribes of Indians had been subjected, and towns had been built under the commands of the two d'Avilas Olid, Francis de Las Casas, Cortes, Alvarado, Gringalsa, Cordova, Roxis, Montejo, &c. From the nature of the country, as I have already described it, the principal settlements were made near the Pacific coast, but the Spaniards did not neglect to consummate their title on the eastern shore, Truxillo, Omoa, and other towns on the bay of Honduras were founded in 1524. Roxis attempted a settlement at Cape Gracios à Dios in 1530, which he found impracticable from the nature of the country. Merida was founded in 1542; Valladolid in 1526, and rebuilt in 1543; Campeche in 1540, and in the interior many towns were built (as Olancho, Comajagua, Segovia, &c. Before 1530 the greater proportion of the very numerous tribes of Indians were subjected to the Spanish authorities either by the military or the ecclesiastical power, for, after the coming of Las Casas, the missionaries did nearly as much as the soldiers in controlling the aborigines. Nicaragua and Honduras are reported to have been most densely populated at the time of the discovery; but scarcely half a century had elapsed before nearly nine-tenth of the natives had faded away before their bloody conquerors. As early as 1524, Cortes wrote to the Emperor Charles V that only two of the many tribes of Honduras remained unconquered. Shortly after these yielded to the power of Alvarado. Some fled to the mountains, and the country now known as Mosquito, where they remained unmolested, protected by their own weakness, and by the want of mineral wealth in the soil on which

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they had taken refuge. They were shielded too by a still stronger arm. Spain, ever jealous of the interference of other European powers in her traffic, left the region unsettled to be a barrier between the Atlantic and the golden regions of the West. But though she neglected to cultivate she never neglected to protect and defend. Guarda costa were early established, to protect the coast, and watch over the argosies, as they set sail for the old world.

The natives of Mosquito were thenceforward constantly under the influence of both the Franciscan and Dominican orders of missionaries. From 1575 to a very late period, Spanish missionaries have almost always resided, by order of the government, among the numerous tribes of Mosquito. Sometimes as many as twenty at a time were there exerting a great influence in softening the barbarity of those savage tribes. It is true that many of them were subjected to the most revolting cruelties, and suffered death itself, yet in almost every instance these were caused by the hostilities and treacheries of these warlike tribes among themselves, and not, as the English writers assert, by their hatred of the Spanish yoke. The missionary was destroyed, not by the tribes with which he lived, but by its enemies. Fortunately the histories of the Franciscan and Dominican orders give ample details of these extraordinary missions.

I think I have now established all I promised with reference to the discovery, conquest, and settlement of this country by Spain. It is not to be conceded, however, that the exaggerated accounts of her wealth and the value of her commerce soon attracted hostile parties to these shores, who in process of time increased in power, and became the foundation for claims adverse to her territorial rights on the Mosquito coast. This brings me to a notice of the buccaneers, or pirates of the West Indies.

The early buccaneers were composed of English, French, Dutch, and Portuguese adventurers. The private enterprises of Drake and his cotemporaries are well known. Like all other buccaneer adventurers for half a century later, they were directed against the Spaniards, only because Spain was the wealthiest and most commercial nation, and therefore the best object of plunder. During time of war (and it should be borne in mind that Spain was almost constantly at war with some European power) these pirates managed to get from unscrupulous governments letters of reprisal, and sometimes sailed under English, sometimes under French, sometimes under Dutch, and sometimes under Portuguese commissions, as the case might be. Spain treated them all alike as pirates. England, in those days, so far from availing herself of their acts, disclaimed them. The Spanish ambassador at London repeatedly remonstrated against their depredations, and was always met with a disavowal. By the time of Cromwell they had become very numerous. Spain increased her guarda costa, and sought to protect herself by destroying them, but this only served to unite all shades and nations together under a kind of piratical republic of the sea. Meanwhile England, France, and Holland had each gained a footing in the West Indies. The pirates had grown so numerous that no power was exempted from their depredations. England felt their influence and was about negotiating with Spain for their overthrow, when the difficulties between Charles and his Parliament interfered to prevent. When the negotiations were renewed with Cromwell he put off the conclusion of a treaty till he could secure some conquest in the West Indies, and dispatched secretly an expedition against Cuba, which, failing in its object, won Jamaica in 1655 to English dominion. Then England

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offered to negotiate, and define the respective rights of England and Spain, but the latter refused. Immediately after the conquest of Jamaica the governors of that island turned their attention to the pirates; and, finding their reduction too difficult a work, sought to take advantage by regulation of what they could not destroy by force. The stringent measures they took induced many to abandon their dangerous avocation, and retire to the Indians of Yucatan, Honduras, and Nicaragua, with whom they had been in intercourse for many years, and hence the great increase of the English trade in logwood, and subsequently in mahogany. The Mosquito Indians about Cape Gracias á Dios had been repeatedly stimulated by the Dutch, French, and English adventurers during the several wars against Spain, to join in the expeditions against the Spanish settlements, and indeed were on such friendly terms with all that each claims the priority of intimacy with them. The earliest attempt of the English to tamper with them was under Sir Thomas Modyford, governor of Jamaica, about 1677. His proceedings were not approved, and in 1670 he was arrested and sent to England. The illicit trade in logwood and other things from Campeche to the Bay of Honduras and the Mosquito country had become so offensive to Spain, who feared that it might cover a permanent occupation, that she was induced to enter into the treaty of 1670, which yields to England the islands she had conquered in the West Indies, defined for the first time the respective rights of the parties, and has been made the basis of all subsequent treaties. This brings me to the second position of the British Government.

By the seventh article of the treaty of Madrid "it is agreed that the most serene King of Great Britain, his heirs and successors, shall have, hold, keep, and enjoy forever, with plenary right of sovereignty, dominion, possession, and propriety, all those lands, regions, islands, colonies, and places whatsoever being or situated in the West Indies, or any part of America, which the said King of Great Britain, or his subjects, do at present hold and possess." It is plainly of great importance to the present inquiry to determine what lands, regions, islands, colonies, or places King Charles, or his subjects, held or possessed in America on the conclusion of that treaty.

Now it is evident that this article was inserted in the treaty to determine a previous conflict of claims to sovereignty, by the fact of existing possession, and that where the claims of the parties had not come in conflict, it had no validity. Leaving out of view all the American continent to the north or south of Central America and the Indies, it is well known that the title to Jamaica was in dispute, and that this article was expressly inserted to settle it by confirming England's occupation. Had it any reference beyond that to Mosquito? After the preceding review I think I am warranted in saying it had not, because, in the first place, I am unable to find that the sovereignty had ever been in dispute; and because, in the second place, the only possession approaching a hostility to Spanish right was that of the buccaneers, composed of all nations, which was not continuous, which was piratical, and therefore clearly illegal, which was disavowed by England, and therefore cannot inure to her, and which was made in admission of Spain's title, since it was a war upon Spain.

And further, Great Britain does not now claim ever to have held or possessed Mosquito. To adopt a little of Lord Palmerston's severity of criticism on the language of treaties, I say that the terms "hold" and "possess" have definite meanings in international law, that they imply title, either temporary, as in the case of a violent occupation in time of

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war, or permanent, to which occupation is not a necessary incident. The claim under which Great Britain shelters the illegal occupation of Mosquito by the English is not set up in itself, but in a monarch of its creation, who is alleged to reign under its protection.

The political relation of protector and protected is not a new one. It grows out of contract. It implies sovereignty in each party, for when the sovereignty of the lesser merges in that of the greater, the peculiar relation ceases. Any occupation, therefore, by the English, at any time must have been (by their own showing) as under Mosquito. Any possession must have been the possession of Mosquito. And when that possession is demonstrated to be, not adverse to, but under Spain, their title, being that of a privy in estate, must take the same course.

Any light in which we view the claim presents a tissue of inconsistencies. To defeat the Spanish title it is alleged that the Indians are an independent nation, whom Spain could never conquer; while, on the other hand, to let in Great Britain to the benefit of such a defeat, it is said that her protection is necessary to enable them to protect themselves against the Spaniard. Either they are an independent nation of themselves, capable of existing without this protection, and therefore not entitled to it, or the aid has been rendered in bad faith to maintain a tribe of savages in revolt against their sovereign.

The contemporaneous construction of the treaty of Madrid shows that the right of Spain to the whole of Central America was not questioned. Sir William Godolphin, the ambassador to Spain, who negotiated and signed the treaty on the part of Great Britain on the $\frac{10}{20}$ May, 1672, wrote to Lord Arlington from Madrid as follows:

Your Lordship hath required my opinion touching the cutting of logwood in the West Indies by some English on pretence that the Parts where they take the same are not Inhabited or Possessed by the Spaniards. * * * * In answer, * * * the said wood is brought from Yucatan a large Province of New Spain, extending into the North Sea like to a Peninsula ab't a hundred leagues in length, sufficiently Peopled in respect of other places of those Indies having several good Towns as Merida Valladolid, San Francisco de Campeche &c., the Govern't thereof being likewise esteemed one of the most considerable there next to the two Vice Royaltyes of Peru and Mexico. * * * * Now this wood growing on the northern coast of Yucatan * * * * is commonly called here Campeche wood. * * * This premised we may reasonably conclude the Crowne of Spayne to have as well too much right as advantage in these woods, not to assert the Propriety of them, for though perhaps they are not all inhabited (which is not to be admired) or distinguished into particular Tenements, but remaine in common, yet they are in generall possessed by these People who may as justly pretend to make use of our Rivers Mountains, and other commons, for not being inhabited or owned by individual Proprietors, as we can to enjoy any benefit of those woods.

And this is the sense of all the Spaniards, who esteeme themselves in full possession of every part of that Province, notwithstanding that it containeth much Territory unpeopled, since (as I have said) to inhabit and possess are distinct, neither is the former essentiall to the latter.

* * * * * * *

Lastly what will render the pretension to a freedome of cutting this wood more odious to the Spaniards is, that in consequence thereof, and for the same reason wee may inferre a liberty to inhabit there, opening a doore to any farther attempt wee may designe against theere continent.

* * * * * * *

This much to the merritts of the cause, & the point of strict justice.

But now, after all this, I will adventure to give my opinion, that if the English in the cutting wood at Campeche would restrain themselves to that alone, observing to doe it in parts neerest to the sea, more remote from their Towns * * * and without making inroads or other depredations on the Country, it may be adviseable for his Maj'y, though not to authorize yet to connive * * * sure for when they [the Spaniards] see the American Treaty in other points punctually complyed with and no other spoyle committed than the bare cutting of that wood * * * they may be induced to connive likewise.

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When it is remembered that up to this time all geographies conceded, or rather never doubted, the right of Spain to the whole of this part of the continent, that that right had been intruded on only by the buccaneers, and that these intrusions had been confined to Yucatan and its neighborhood, and had not yet extended as far south as Mosquito, which was a part of New Spain, of which "the Spaniards then esteemed themselves in full possession of every part," the completeness of the testimony will be understood and its almost prophetic nature appreciated. And I am prepared to show, in addition, that the connivance of the governors of Jamaica in such cutting and encroachment was encouraged and approved in London.

I shall now assume it to be clearly proved that in 1670, while the English had no right, either directly or indirectly, in Mosquito, Spain held undoubted sovereignty over it, and shall travel forward to the year 1739, when hostilities commenced between Great Britain and Spain, during which a permanent occupation of this country by the former power was for the first time attempted. Most of the acts of occupation or protection (for they sometimes take the one form and sometimes the other) on the part of England took place between this date and the peace of Paris in 1763, and were either done during a time of hostilities or were themselves causes of a subsequent war. It is plain, therefore, that, being aggressive, they cannot now be used by Great Britain to set up the alleged title in the Indians.

On the 19th of October, 1739, war was declared against Spain, ostensibly because she had neglected to pay the paltry balance of £95,000 according to treaty; but the real object of the British colonists appears to have been to gain a stronger footing in the West Indies before concluding a peace. On the 17th of August, 1740, Sir William Pultney, of the Admiralty, wrote to Admiral Vernon, then in the West Indies, a long letter, detailing the plans of the Government. He says:

> To ravage the coast of Spain (supposing we could do it) seems to be with a desire only of forcing the Spaniards into a peace before we have secured such advantage as we may reasonably hope for in another place. Every man of sense agrees that the only place to push them in is the West Indies, and there we can be too hard for them, and may defy the whole world besides. * * * We [England] one and all cry out there is no dependence on the faith of treaties. Something must be done to keep the Spaniards from insulting us again, and we must no longer rely on bare promises only for the security of our navigation and commerce. Take and hold, is the cry. This plainly points to Cuba. * * * It [the taking of Carthagena] might be a very sensible mischief to Spain, but what we now immediately want is advantage to ourselves. * * * When we are once possessed of it [Cuba] the whole world will not be able to dispossess us again. We may then make peace with Spain without the intervention of France, giving them almost anything in Europe they may desire, but showing them at the same time they shall in great measure depend upon us, the chief maritime power, and convincing them of the truth of their own old proverb: *Peace with England and war with the whole world.*

During the years 1739 and 1740 many projects were framed for the purpose of gaining the desired footing in the West Indies, for the accounts of the wonderful details of which we are indebted to the principal actors in them, many of whose most confidential letters, owing to private quarrels, have been published. In addition to these, I have been permitted to examine the original Vernon and Wager manuscripts, a collection embodying in the original official as well as private letters of the Duke of Newcastle, of Sir Charles Wager, of Admiral Vernon, of Sir William Pulteney, of Governor Trelawney, of Mr. Robert Hodgson, and of many others, a mass of authentic information never published, and not existing anywhere else, unless in her Majesty's state-paper office. I am happy to say that this collection will probably go to America, as it is now owned by an American gentleman.

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As soon as hostilities were determined upon, the Duke of Newcastle (on the 15th of June, 1739) directed Governor Trelawney to be on his guard against any attempt of the Spaniards against Jamaica, and gave him full power and liberty to annoy the enemy. He directed him also to encourage the taking out of letters of marque and reprisal against the Spaniards, and to authorize descents upon the Spanish settlements.

On the receipt of these orders, Governor Trelawney at once revived the old scheme of the Mosquito Indians, and on the 20th January, 1739-'40, wrote to the Duke of Newcastle, advising a settlement upon the Mosquito shore. About one hundred Englishmen, he said, were there, "mostly such as could live nowhere else." He proposed to bring all the English in that quarter together in one settlement, so that by the help of the Mosquito Indians, whom he calls his "friends," they might induce the neighboring Indians to revolt, and thus by supporting the Indians "a little, spread the revolt from one part to another till it should be general over the Indies, and drive the Spaniards entirely out or cut them off." Accordingly, early in 1740 he commenced his Quixotic scheme by sending one Robert Hodgson to the Mosquito shore, fully equipped with everything necessary to enable him to tamper with the Indians and excite them against the Spaniards. I am fortunately able to give from the Vernon manuscripts Mr. Hodgson's own account of what he did under this extraordinary commission:

SANDY BAY, *April 8, 1740.*

May it please your excellency: * * *

King Edward, being informed of my arrival, sent me word that he would see me the next day, which he did, attended by several of his captains. I read to him your excellency's letter and my own commission, and when I had explained them by an interpreter, told my errand, and recommended to them to seek all opportunities of cultivating friendship and union with the neighboring Indian nations, and especially such as were under subjection to the Spaniards, and of helping them to recover their freedom. They approved everything I said, and appointed the 16th to meet the governor, John Briton, and his captains at the same place, to hear what I had further to say.

On the 16th they all came, except Admiral Dilly and Colonel Morgan, who were sick. General Hobby and his captains were at too great a distance to be sent for, but, their presence not being material, I proceeded to acquaint them that, as they had long acknowledged themselves subjects of Great Britain, the governor of Jamaica had sent me to take possession of their country in his majesty's name; then asked if they had anything to object. They answered they had nothing to say against it, but were very glad I was come for that purpose; so I immediately set up the standard, and, reducing the sum of what I had said into articles, I asked them both jointly and separately if they approved and would abide by them. They unanimously declared they would; so I had them read over again in a solemn manner under the colors, at the end of every article fired a gun, and concluded with cutting up a turf, and promising to defend their country and to procure them all the assistance and instruction from England in my power.

The formality all this was done with seemed to have a good influence upon them, for they often repeated their desire of learning to read, and said they must now mind their kings more than they had done, and do all they could to help themselves and hurt the Spaniards, to whom I recommended all the mercy that was consistent with their own safety; but they seemed not to understand me rightly, saying if they fight they must kill. The articles I inclose, and hope your excellency will excuse so much ceremony, for, as I had no certain information whether the country was ever taken possession of before or ever claimed otherwise than by sending them down commissions, I thought the more voluntary and clear the cession of it was the better. The governor came attended with a numerous guard, who behaved to him with much respect and *silence*. He is a sensible old man, and carries a good command. The king being very young, I believe not twenty, is not much observed, but was he to be a while in Jamaica or England 'tis thought he would make a hopeful monarch enough.

* * * * * * *

The same day Admiral Dilly and Colonel Morgan sent me word they were coming to wait on me. I immediately crossed the lagune to meet them, hearing they were sensible, clever fellows, and such I found them. They had dispatched a messenger to the governor to meet them the next day, to hold a general and decisive council.

They all met on Sunday, the 23d, at Senock Dawkra (Mr. Whitehead's house). The

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governor, being sick, tried our patience by making us wait till the afternoon, but when he came made ample amends by the justness of his sentiments.

He told the king and his captains it was plain they had got a name and the good opinion of the governor of Jamaica (whose success against the rebellious negroes they had all heard of), and if they did not keep it up what would the world say of them? There was an officer now sent down by your excellency to observe their manner of fighting, and if they did not do their best they should lose the favor of the English. It was true they were but a small number of people, compared to us, who had men to spare for sickness and the sword, but if they showed themselves worthy, no doubt the King of Britain would send a force sufficient to get them all they wanted, besides teachers to instruct them in what is right and good. He said General Hobby had often talked about taking towns in time of peace, and called the English cowards. Now it was war they must show they were not such themselves; that the English were the best judges when war or peace was proper; and none of them had any business to act otherwise than they were directed by the governor of Jamaica. * * * *

I find my council about sobriety has had some weight with the old men, but the young ones are got together there since with the women into drinking-bouts. They intoxicate themselves with a liquor made of honey, pine-apples, and cassada, and if they avoid quarrels, which often happen, they are sure to have fine promiscuous doings among the girls. The old women, I am told, have the liberty of chewing the cassada before 'tis put in, that they may have a chance in the general rape as well as the young ones.

I fell into one of them by mere accident last Monday, where I found Admiral Dilly and Colonel Morgan retailing my advice among them, to little effect, for most of them were too drunk to mind it, and so hideously painted that I quickly left them to avoid being daubed all over, which is the compliment they usually pay their visitors on those occasions.

Those two captains complain much of their drinking, but say it has been taught them by the English; others say not, for how should the English invent the pine and cassada drink? Their resentment of adultery has lost its edge, too, more than among other Indians; that, I make no doubt, they are obliged to us for. Their breach of promises to their bargains I take to be a good deal owing to a sense of being defrauded by traders, but through their ignorance of numbers and value, not being able to tell how, they are apt to make improper reprisals. As for their laziness, the grand promoter of the rest, I really think it must have been owing to their discontent at the usage they have received from privateers and others, because I don't find it has been epidemical amongst them till lately.

* * * * * * *

I have disposed of several presents, but their returns being chiefly in visits to get more or to drink punch, I have stopped my hand. The Lubeck duck osnaburgs, powder, ball, flints, and shot I shall divide among them at setting out, with a promise that they shall pay me according to their behavior or their plunder. * * *

ROBT. HODGSON.

APRIL 12, 1740.

P. S.—Had I been better informed, I might have made a little fortune out of your excellency's money and done more justice to the cause, for the Mosquito men have not got half guns enough, so must be supplied by Stewart and the other white men that go with us, who, no doubt, will make them pay sound.

* * * * * * *

The origin, character, history, and results of the British intrigues in this quarter are all disclosed in this letter. They originated in public and private cupidity, in the desire of territorial aggrandizement, and of personal gain to the governor of Jamaica. They were pursued in the same spirit by the distribution of intoxicating liquors and missiles of destruction among the savages, and by exciting them to an unnatural war against the Spaniards. They resulted in the complete degradation of the Indians themselves, a degradation which they have never been able to shake off. Yet this is the "protection" Great Britain sets up and seeks to perpetuate.

Mr. Hodgson skillfully aroused the old resentment of the Indians against the Spaniards, and induced them to join him in an expedition which proved a failure. He, however, remained among them, and was instructed by Governor Trelawney "to endeavor to persuade the Indians to form themselves into some sort of a government."

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Meanwhile the home government had the scheme under consideration, and approved of it. But Sir Charles Wager had fallen in with another adventurer, named Lee, and wrote to Admiral Vernon from the admiralty office as follows, under date May 23, 1741:

I sent Governor *Trelawney*, by the last ships, some accounts I had from one Captain Lee, who was some time a factor to the South Sea Company, at *Guatimalla*, of the particular situation, riches, and trade of that part of the continent, which is much more than I imagined. The governor's *Don Quixotte*, Mr. Hodgson, seemed to want this Captain Lee with him, and I could have seen him had it not been for some difficulties, but I had his scheme in writing, and sent it to *Plymouth*, but the ships were gone before it came there.

Again, on the 18th of August following, he wrote to the admiral thus:

I sent you by the last ships a scheme of Captain Lee for a proper number of soldiers, when they can be spared or can do nothing more considerable, to go down to the Mosquitos, and, with or without them, to make attempt on the Spaniards up the river Dulce, where Captain Lee seems perfectly acquainted; but as we have made him captain of the *Bonetta* sloop, purely for the sake of this scheme only, I refer you to him for a clear explication of the whole scheme, which in its consequences may be much more considerable than it appears at first sight, for if we can procure a sufficient number of arms for the *Indians*, who are able and willing, as he says, to pay for them, though that is not material, they would soon make themselves their own masters, and drive all the *Spaniards* out of the country, or change conditions with them and make them the hewers of wood and drawers of water; and this I think they may do, if supplied with arms and all things necessary, *more easily than the Spaniards conquered them* [the italics are mine except the word Spaniards], for if once there was a considerable insurrection of the *Indians* about *Guatimalla* and that country, in which the *Mosquito* men may perhaps be persuaded to join with them, there would soon be an insurrection both in *Mexico* and *Peru*, of which the *Spanish* court has been very much afraid, especially in *Peru* and *Chili*, where it is not improbable but the *Creole Spaniards* would soon join with them and set up a king of their own.

Again on the 20th of the same month, and still again on the 7th of October following, he wrote to Admiral Vernon, reiterating these views in almost the same language. These letters, as well as that of Mr. Hodgson, expose the manner and the object of the British tampering with the Indians.

In 1743 these "schemes" had so far progressed that Governor Trelawney recommended that a company of troops should be kept at the Mosquito shore, and that some sort of government should be established there, and the governor encouraged emigration there, and tried to get permission from the government to grant lands, and thus induce settlement. But the board of trade did not approve of this.

On the 19th of July, 1744, notwithstanding the discouraging report of the board of trade as to the rights of Spain, an order passed the council detaching a certain number of troops from Jamaica for the Mosquito shore, and providing for the erection of forts and the establishment of a government. In February, 1748, there was another order in council for sending a supply of ordnance to the new settlement on the Mosquito shore to the amount of £1,528 13*s.* 7*d.*

The fort at Black River was completed in 1747, so that Governor Trelawney was confident that should the Spaniards make a descent upon Mosquito shore, as was expected in the summer of 1748, it "would be able not only to defend itself, but to annoy the enemy."

During all this time (*i. e.*, from 1739 to the peace of Aix la Chapelle) I do not learn that the Spaniards made any direct attempt to dislodge the English from the Mosquito shore, except by an expedition from Nicaragua in 1747, which was a failure. The reason was they were busily engaged in more important places.

Matters were not changed by this peace. The English gained no new rights. They, nevertheless, determined to maintain their settle-

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ment, and in October, 1749, the king appointed Captain Hodgson "to regulate and superintend the settlement on the Mosquito shore, which has been subsisting several years under the protection of our friends and allies, the Mosquito Indians." Captain Hodgson was to put himself under the direction of the governor of Jamaica, and to correspond with him. One cannot but admire the facility with which the relation of the Indians shifts from protector to protected to suit the exigencies of the case.

In 1750 and 1751 the Spanish authorities remonstrated against these proceedings, asserted their rights, and threatened an expulsion of the English. Governor Trelawney, alarmed at the aspect of affairs, sent Hodgson an artful set of instructions for his conduct towards the Indians, which were to be shown to the President of Guatemala, to cause him to believe that the object of the English in keeping a superintendent among the Indians was to restrain them in their hostilities against the Spaniards; but upon their being presented to him he protested against the English interference, and proposed sending a Spanish agent or governor among the Indians. In reply, Hodgson wrote to him on the 3d of December, 1750, that he was already there as a superintendent, appointed by the governor of Jamaica to protect the Spaniards, as they could not protect themselves, and asserted that the Indians were free, never having been conquered by Spain.

In 1757 an attack by the Spaniards was apprehended at the shore, but only a missionary was sent among the Indians, named Juan Joseph Solis de Meranda, who reported that hostilities would not be commenced if he were allowed to remain among the Indians. This was at first granted; but the English, soon perceiving the influence he was gaining over the natives, to their great prejudice, arrested him under the pretense of his being an impostor, and sent him to Jamaica.

It now came to the knowledge of the governor of Jamaica that the Spaniards were making preparations for invading the Mosquito shore and driving the English from it. The settlers became alarmed and demanded that the detachment of soldiers should be withdrawn. The governor, on his part, proposed that the fort should be demolished rather than give umbrage to the Spaniards.

In 1752 Governor Knowles succeeded Governor Trelawney. He took a different view of the rights of the Mosquito Indians, restored Father Solis, and seemed determined to expose these transactions. He entered into a correspondence with the governor of Guatemala, and proposed a cessation of hostilities till he could hear from England. On the 26th of March, 1753, he wrote to the secretary of state that the settlement on Mosquito shore was "a job"; that if Captain Hodgson was not checked or recalled he "would involve the nation in difficulties"; that the Indians were so perplexed they "did not know which part to take"; and that he should advise withdrawing the troops unless the ministry intended to maintain the right to the territories, which he thought was not worth contending about.

During Governor Knowles's administration the condition of things improved, but he was not allowed to remain long. On his departure they fell back into the old channel, the English covertly acting the part of aggressors, the Spaniards resisting by protest and by force, until the treaty of Paris in 1673; except that in 1759 the Indians took up arms against the English, being discontented with their treatment of them and disgusted with the course of Captain Hodgson, and except also that this latter year was signalized by a communication from the board of trade ignoring the existence of any British settlement on the Mos-

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quito shore, and declining, therefore, to entertain complaints against officers of the crown for acts done there.

The treaty of Paris assumes to define the respective rights of the parties in Central America. By Article XVII it is provided that "His Britannic Majesty shall cause to be demolished all fortifications which his subjects shall have erected in the Bay of Honduras, *and other places of the territory of Spain in that part of the world*, &c., and then the right is given to the English to cut logwood on the "Spanish coasts and territories." In accordance with this provision, all the British fortifications in Mosquito were demolished and the troops removed. But the settlers remained both there and in Honduras for the purpose of cutting and carrying away logwood, and marked their residence by repeated aggressions, similar to those already described, which I can give you in detail if you desire it. In 1783, at the close of the contests which accompanied the American Revolution, it was found necessary to define more particularly the rights of the English cutters, which is accordingly done by the sixth article of the treaty of Versailles, where it is provided that, "the intention of the two high contracting parties being to prevent as much as possible all the causes of complaint and misunderstanding heretofore occasioned by the cutting of wood for dyeing, or logwood, and several English settlements having been formed and extended under that pretense upon the Spanish continent, it is expressly agreed that His Britannic Majesty's subjects shall have the right of cutting," &c. (defining the limits about the Belize within which the right might be exercised), "and His Catholic Majesty assures to them the enjoyment of all that is expressed within the present article, *provided that these stipulations shall not be considered as derogating in any wise from his rights of sovereignty.*" And then it was provided that within eighteen months from the ratification the English should wholly retire from the Spanish continent and islands to the space allotted to them. This the English were understood at the time to have received as a compensation for abandoning Mosquito.

It is now claimed by Great Britain that before the conclusion of this treaty Mosquito had become an independent nation, and therefore was not embraced within its provisions. The argument upon which this is founded involves the consideration of the English title.

Starting from the position that the Indians had never been conquered, and therefore were not within Spanish jurisdiction (the fallacy of which I have already shown), all English writers rely on three, and only three, circumstances to establish the Mosquito protectorate, all of which are stated by Lord Palmerston in his note to Mr. Castellon of July 16, 1849: 1st. A submission by the Mosquito King to the governor of Jamaica on behalf of the King of England in 1687, founded on an alleged prior submission between 1645 and 1660. 2d. A convention between the governor of Jamaica and the King of the Mosquitos, concluded June 25, 1720. 3d. Certain reports and resolutions made in 1774 in the house of assembly of Jamaica.

To all this I might reply that the Mosquitos could not of themselves change their political connection; that, not being an independent nation, all acts done by them as such are void; that the demolition of fortifications shows England's construction of the treaty of Paris; and that the treaty of Versailles uses the broad language of the "*Spanish continent*," and affirms Spanish sovereignty. Without dwelling on these apparent considerations, I turn to the authorities relied upon for these positions.

And as to the first, I find that all writers refer for proof to an account of the matter given by Sir Hans Sloane, who was in Jamaica at the time

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of the alleged submission to the Duke of Albemarle, the governor, and was his family physician, and of course in a position to know all about it. The authority most often cited is a memoir by Bryan Edwards, entitled "Some account of the British Settlements on the Mosquito Shore, drawn up for the use of Government in 1773." The history of this memoir is a little curious. It purports to have been drawn up for the use of government in 1773. It was printed anonymously, and was in 1776 "laid before Parliament" with the case of the Morning Star, to which I shall soon allude. The treaties of 1783 and 1786 having been concluded, the subject dropped. Twenty years afterwards, Mr. Edwards published his "History of the West Indies," in one of the foot-notes to which he states that *the settlement in Mosquito having been surrendered to Spain by the treaty of 1786*, it did not come within the plan of his work to treat of them, but referred all curious on this subject to this memorial. In 1819, in the fifth edition of his history (the first published after his death), this memorial was for the first time printed with the history, and under his name. It is now reproduced by the Foreign Office in the "correspondence," &c., on this subject, submitted to Parliament in 1848. That you may see how history has been perverted, I give you in parallel columns what Sir Hans Sloane really did say (copied from his printed history) and what Mr. Edwards represents him as saying:

SIR HANS SLOANE.	MR. EDWARDS.
One King Jeremy came from the *Mosquitos* (an *Indian* People near the Provinces of *Nicaragua*, *Honduras*, and *Costa Rica*). He pretended to be a king there, and came from the others of his country, to beg of the Duke of *Albemarle*, governor of Jamaica, his *Protection*, and that he would send a Governor thither with a power to war on the *Spaniards* and Pirats. This he alleged to be due to his country from the Crown of *England*, who had in the reign of King *Charles* I submitted itself to him. The Duke of *Albemarle* did nothing in this matter, being afraid it might be a trick of some people to set up a Government for Bucaniers or Pirats. This *King Jeremy*, in coming to Town, asking many questions about the Island, and not receiving as he thought, a satisfactory account, he pulled off his *European* cloaths his friends had put on, and climb'd to the top of a tree to take a view of the country.	
The memorial and substance of what he, and the people with him, represented to the Duke of *Albemarle*, was, That in the reign of King *Charles* I of ever Blessed memory, the Earl of Warwick (by virtue of letters of reprisal granted by his said majesty for damages received from the Subjects of his Catholic majesty) did possess himself of several islands in the West *Indies*, particulary that of *Providence* (since called by the *Spaniards St. Catalina*) which is situate in 13 deg. 10 m. N. Lat., lying East from *Cape Gratios de Dios* (vulgarly known by the name of the *Muskitos*) between Thirty and Forty leagues: which put the said Earl upon trying all ways and means of future correspondence with the natives of the said Cape, and neigh-	The memorial and substance [says Sir Hans] of what he (the Mosquito King) and the people with him represented to the Duke of Albemarle was that in the reign of Charles I. the Earl of Warwick, by virtue of letters of reprisal, possessed himself of several islands in the West Indies, particularly that of Providence (since called by the Spaniards St. Catalina), which is situated 13° 10 m. N. lat., lying east from Cape Gracios a Dios (vulgarly known by the name of the Mosquitos) between thirty and forty leagues, which put the said Earl upon all ways and means of future correspondence with the natives of the said cape and neighboring country: and in some little time he was so successful as to gain that point,

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boring country, and in some little time was so successful as to gain that Point, and further prevailed with them so far, as to persuade them to send home the King's son, leaving one of his People as Hostage for him, which was Col. Morris, now living at New York. The *Indian* Prince going home with the said Earl, staid in *England* three years, in which time the *Indian King* died, and the said natives having in that time had intercourse of Friendship and Commerce with those of *Providence* were soon made sensible of the grandeur of his Majesty of *Great Britain* and how necessary his Protection was to them. Upon the return of the said *Indian* Prince, they persuaded him to resign up his authority and power over them, and (with them) unanimously declare themselves the subjects of his said Majesty of Great Britain, in which opinion they have ever since persisted, and do own no other Supreme command over them.

and prevailed with them so far as to persuade them to send home the King's son, leaving one of his people as a hostage for him, which was Col. Morris, now living in New York. The Indian prince, going home with the said Earl, staid in England three years, in which time the Indian king died, and the natives, having in that time intercourse and commerce with those of Providence, were soon made sensible of the grandeur of his Majesty of Great Britain, and how necessary his protection was to them. Upon the return of the said Indian Prince, they persuaded him to resign up his authority and power over them, and with them unanimously declare themselves the subjects of his said Majesty of Great Britain: in which opinion [continues Sir Hans] they have ever since persisted, and do own no other supreme command over them.

I am sure you will agree with me that a worse perversion of history than this can scarcely be found elsewhere. The original authority, when produced, states expressly that the Duke of Albemarle did nothing in the matter. Mr. Edwards suppresses the fact that Lord Warwick's expedition was hostile to Spain; and the opinion attributed to Sir Hans at the close of the extract is found to be not his, but the language of the memorial.

But I am able to go a step further in the history of this curious title, and show the equivalent which the Indian Esau received for his birthright. In a pamphlet first published in 1699 (eight years before the publication of Sir Hans Sloane), and afterwards republished in the sixth volume of Churchill's Voyages, containing an account of the Mosquito shore from a very intelligent person, evidently well acquainted from observation, is the following passage:

He [the King] says that his father, *Oldman*, King of the Mosquito men, was carried over to England soon after the conquest of Jamaica, and there received from his brother King a crown and commission, which the present *Old Jeremy* still keeps safely by him, *which is but a cocked hat, and a ridiculous piece of writing that he should kindly use and relieve such struggling Englishmen as should choose to come that way with plantains, fish, and turtle, &c., &c.*

The words that I have italicised in the latter part of this extract need no comment.

As to the second fact now alleged, I have only to say that the "convention" is published in the Mosquito correspondence submitted to Parliament in 1848; and so far from proving any sovereignty in the Indians, shows the contrary. It is neither treaty nor convention. It is a *contract* between King Jeremy on the one side, signed with "his mark," and Governor Lawes on the other, *sealed with the* PRIVATE *seals of both parties*, by which the King contracts to furnish fifty men to hunt negroes, and the governor to pay for them and give them "rum" enough for the voyage home; very similar to the contract made subsequently with the Spanish hunters of Cuba for the employment of bloodhounds for the same purpose. This is not the mode in which high contracting parties usually deal with each other. Any argument deduced from it is founded in an ignorance of the distinction between a sovereignty in the soil and a dominion over the persons of the savages composing the tribe.

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As to the third fact, without stopping to dwell on its *ex-parte* character, I have reason to think that the move was made in Jamaica at the instance, among others, of this Mr. Edwards, who drew up, to further it, the memorial above alluded to. To show how little the government at home entered into it, in 1776 a vessel called the Morning Star, with certain Indians on board, who had been to England to aid in putting down the practice of selling the Indians into slavery, was seized by the Spanish Guarda Costas on its return to Mosquito. The owners brought the subject before Parliament, presenting with their petition Mr. Edwards' memorial. After a long debate, in which it was asserted that the seizure was justifiable, as the treaty had been violated, Parliament refused to entertain the subject.

I have now examined the only evidence adduced in support of the English claim to a protectorate, and, unless I deceive myself, it dwindles into insignificance. I now resume the historical thread.

The English settlers were lax in conforming to the provisions of the treaty of 1783, the territory allotted to them being found to be too small, and the eighteen months passed away without their removal. Spain began to complain of this infraction, and the result was the treaty of 1786, which, besides, enlarging the territory to be occupied by the English, and making various regulations about it, contains the following provisions:

I. His Britannic Majesty's subjects, and the other colonists who have hitherto enjoyed the protection of England, shall evacuate the country of the Mosquitos, &c.

XI. * * * In this view His Britannic Majesty engages to give the most positive orders for the evacuation of the country above mentioned by all his subjects, of whatever denomination; but if, contrary to such declaration, there should still remain any persons so daring as to presume, by retiring into the interior of the country, to endeavor to obstruct the entire evacuation already agreed upon, His Britannic Majesty, so far from affording them the least succor, or even protection, will disavow them in the most solemn manner, as he will equally do those who may hereafter attempt to settle upon *the territory belonging to the Spanish dominion.*

XIV. His Catholic Majesty, prompted solely by motives of humanity, promises to the King of England that he will not exercise any act of severity against the Mosquitos inhabiting in part the countries which are to be evacuated by virtue of the present convention on account of the connections which may have subsisted between the said Indians and the English. * * *

This was looked upon as an abandonment by England. It was so avowed in Parliament in a debate on a motion to impeach the ministry. Bryan Edwards admits it in the foot-note cited above. The Mosquito settlers themselves considered it so, and put in a claim to Parliament for damages, which was allowed. Extracts from their statement of the grounds of their claim have found their way into the appendix to the Mosquito correspondence of 1848, under the title of "Extracts from McGregor's Commercial Tariffs, Part XVII."

Still later, in the Quarterly Review for October, 1822, article VIII, in a review of a work on Mosquito Shore by one Captain Strangeway, is the following strong language. After saying that—

The whole of the Mosquito Shore and Honduras and the town of Poyais have for many centuries belonged to Spain, and have been considered as constituent portions of the kingdom of Mexico, not one foot of which was ever held by the English, except occasionally during a war, by the buccaneers, or more recently by the logwood cutters;

and reviewing the treaties of 1783 and 1786, the writer says:

Nothing can more clearly establish the sole right of Spain to these territories than the treaty and convention above mentioned. We never had any business there. The simple fact is that the Mosquito Indians have always borne an inveterate dislike to the Spaniards. The Duke of Albemarle, when governor of Jamaica, fostered that dislike, and invested one of the Indians with a commission as chief of the Mosquitos, under the protection of England; a foolish ceremony, which was exercised long after

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by his successor, just as we now make King Toms and King Jacks among the negroes of Western Africa; but, if treaties are to be considered as at all binding, it is quite clear that we have not the right, nor even the permission of residence on the Mosquito Shore, and that we cut logwood and mahogany on the shores of Honduras Bay only by sufferance.

It is worthy of remark that in a reply to the Review, published in 1823, is the admission that "this territory belongs to Spain."

* * * * * * *

I have, &c.,

ABBOTT LAWRENCE.

24.—*Clayton-Bulwer treaty of April 19, 1850.*

The United States of America and Her Britannic Majesty, being desirous of consolidating the relations of amity which so happily subsist between them, by setting forth and fixing in a convention their views and intentions with reference to any means of communication by ship-canal which may be constructed between the Atlantic and Pacific Oceans by the way of the river San Juan de Nicaragua and either or both of the Lakes of Nicaragua or Managua, to any port or place on the Pacific Ocean, the President of the United States has conferred full powers on John M. Clayton, Secretary of State of the United States, and Her Britannic Majesty on the Right Honorable Sir Henry Lytton Bulwer, a member of Her Majesty's most honorable privy council, knight commander of the most honorable Order of the Bath, and envoy extraordinary and minister plenipotentiary of Her Britannic Majesty to the United States, for the aforesaid purpose; and the said plenipotentiaries having exchanged their full powers, which were found to be in proper form, have agreed to the following articles:

ARTICLE I.

The Governments of the United States and Great Britain hereby declare that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said ship-canal; agreeing that neither will ever erect or maintain any fortifications commanding the same or in the vicinity thereof, or occupy, or fortify, or colonize, or assume, or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America; nor will either make use of any protection which either affords or may afford, or any alliance which either has or may have to or with any state or people, for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America, or of assuming or exercising dominion over the same; nor will the United States or Great Britain take advantage of any intimacy, or use any alliance, connection, or influence that either may possess with any state or government through whose territory the said canal may pass, for the purpose of acquiring or holding, directly or indirectly, for the citizens or subjects of the one, any rights or advantages in regard to commerce or navigation through the said canal which shall not be offered on the same terms to the citizens or subjects of the other.

ARTICLE II.

Vessels of the United States or Great Britain traversing the said canal shall, in case of war between the contracting parties, be exempted from

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blockade, detention, or capture by either of the belligerents; and this provision shall extend to such a distance from the two ends of the said canal as may hereafter be found expedient to establish.

ARTICLE III.

In order to secure the construction of the said canal, the contracting parties engage that if any such canal shall be undertaken upon fair and equitable terms by any parties having the authority of the local government or governments through whose territory the same may pass, then the persons employed in making the said canal, and their property used, or to be used, for that object, shall be protected, from the commencement of the said canal to its completion, by the Governments of the United States and Great Britain, from unjust detention, confiscation, seizure, or any violence whatsoever.

ARTICLE IV.

The contracting parties will use whatever influence they respectively exercise with any state, states, or governments, possessing or claiming to possess any jurisdiction or right over the territory which the said canal shall traverse, or which shall be near the waters applicable thereto, in order to induce such states or governments to facilitate the construction of the said canal by every means in their power. And furthermore, the United States and Great Britain agree to use their good offices, wherever or however it may be most expedient, in order to procure the establishment of two free ports, one at each end of the said canal.

ARTICLE V.

The contracting parties further engage, that when the said canal shall have been completed, they will protect it from interruption, seizure, or unjust confiscation, and that they will guarantee the neutrality thereof, so that the said canal may forever be open and free, and the capital invested therein secure. Nevertheless, the Governments of the United States and Great Britain, in according their protection to the construction of the said canal, and guaranteeing its neutrality and security when completed, always understand that this protection and guarantee are granted conditionally, and may be withdrawn by both governments, or either government, if both governments, or either government, should deem that the persons or company undertaking or managing the same adopt or establish such regulations concerning the traffic thereupon as are contrary to the spirit and intention of this convention, either by making unfair discriminations in favor of the commerce of one of the contracting parties over the commerce of the other, or by imposing oppressive exactions or unreasonable tolls upon passengers, vessels, goods, wares, merchandise, or other articles. Neither party, however, shall withdraw the aforesaid protection and guarantee without first giving six months' notice to the other.

ARTICLE VI.

The contracting parties in this convention engage to invite every state with which both or either have friendly intercourse to enter into stipulations with them similar to those which they have entered into with each other, to the end that all other states may share in the honor and advantage of having contributed to a work of such general interest and importance as the canal herein contemplated. And the contracting parties likewise

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agree that each shall enter into treaty stipulations with such of the Central American States as they may deem advisable, for the purpose of more effectually carrying out the great design of this convention, namely, that of constructing and maintaining the said canal as a ship communication between the two oceans for the benefit of mankind, on equal terms to all, and of protecting the same; and they also agree, that the good offices of either shall be employed, when requested by the other, in aiding and assisting the negotiation of such treaty stipulations; and should any differences arise as to right or property over the territory through which the said canal shall pass between the states or governments of Central America, and such differences should in any way impede or obstruct the execution of the said canal, the Governments of the United States and Great Britain will use their good offices to settle such differences in the manner best suited to promote the interests of the said canal, and to strengthen the bonds of friendship and alliance which exist between the contracting parties.

Article VII.

It being desirable that no time should be unnecessarily lost in commencing and constructing the said canal, the Governments of the United States and Great Britain determine to give their support and encouragement to such persons or company as may first offer to commence the same, with the necessary capital, the consent of the local authorities, and on such principles as accord with the spirit and intention of this convention; and if any persons or company should already have, with any state through which the proposed ship canal may pass, a contract for the construction of such a canal as that specified in this convention, to the stipulations of which contract neither of the contracting parties in this convention have any just cause to object, and the said persons or company shall moreover have made preparations, and expended time, money, and trouble, on the faith of such contract, it is hereby agreed that such persons or company shall have a priority of claim over every other person, persons, or company to the protection of the Governments of the United States and Great Britain, and be allowed a year from the date of the exchange of the ratifications of this convention for concluding their arrangements, and presenting evidence of sufficient capital subscribed to accomplish the contemplated undertaking; it being understood that if, at the expiration of the aforesaid period, such persons or company be not able to commence and carry out the proposed enterprise, then the Governments of the United States and Great Britain shall be free to afford their protection to any other persons or company that shall be prepared to commence and proceed with the construction of the canal in question.

Article VIII.

The Governments of the United States and Great Britain having not only desired, in entering into this convention, to accomplish a particular object, but also to establish a general principle, they hereby agree to extend their protection, by treaty stipulations, to any other practicable communications, whether by canal or railway, across the isthmus which connects North and South America, and especially to the inter-oceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by the way of Tehuantepec or Panama. In granting, however, their joint protection to any such canals or railways as are by this article specified, it is always understood by the United States and Great Britain that the

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parties constructing or owning the same shall impose no other charges or conditions of traffic thereupon than the aforesaid governments shall approve of as just and equitable; and that the same canals or railways, being open to the citizens and subjects of the United States and Great Britain on equal terms, shall also be open on like terms to the citizens and subjects of every other state which is willing to grant thereto such protection as the United States and Great Britain engage to afford.

ARTICLE IX.

The ratifications of this convention shall be exchanged at Washington within six months from this day, or sooner if possible.

In faith whereof, we, the respective plenipotentiaries, have signed this convention, and have hereunto affixed our seals.

Done at Washington, the nineteenth day of April, anno Domini one thousand eight hundred and fifty.

JOHN M. CLAYTON. [L. S.]
HENRY LYTTON BULWER. [L. S.]

25.—*Sir H. L. Bulwer to Lord Palmerston.*

[Extract.]

WASHINGTON, *April 28, 1850.* (Received May 14.)

In my previous dispatch of this day I have informed your lordship of my having concluded a treaty with Mr. Clayton respecting the construction of a ship communication between the two oceans of the Atlantic and Pacific, and I have there stated to your lordship that there are some slight differences between the original project transmitted home on the 3d of February and the treaty now concluded.

I have thought it better to explain the nature of these changes, and my reasons for adopting them, in a separate dispatch; and I shall do so, rather according to the manner and time in which they were made, than according to the place in the convention in which they occur.

The first, therefore, I shall refer to is in Article VI, to which are added the words:

And should any differences arise as to right or property over the territory through which the said canal shall pass between the states or governments of Central America, and such differences should in any way impede or obstruct the execution of the said canal, the Governments of Great Britain and the United States will use their good offices to settle such differences in the manner best suited to promote the interests of the said canal, and to strengthen the bonds of friendship and alliance which exist between the contracting parties.

This addition, in reconsidering the matter, was deemed, both by myself and Mr. Clayton, an advantage to the treaty, and a sort of guarantee against future unfriendly disputes between the two governments as to the subject referred to.

The second addition agreed to is in Article VII, to which has been added:

And if any persons or company should already have, with any state through which the proposed ship-canal may pass, a contract for the construction of such a canal as that specified in the convention, to the stipulations of which contract neither of the contracting parties in this convention have any just cause to object; and the said persons or company shall, moreover, have made preparations and expended time, money, and trouble on the faith of such contract, it is hereby agreed, that such per-

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sons or company shall have a priority of claim over every other person, persons, or company, to the protection of the Governments of Great Britain and the United States, and be allowed a year from the date of the exchange of the ratifications of this convention for concluding their arrangements, and presenting evidence of sufficient capital subscribed to accomplish the contemplated undertaking, it being understood that if, at the expiration of the aforesaid period, such persons or company be not able to commence and carry out the proposed enterprise, then the Governments of Great Britain and the United States shall be free to afford their protection to any other persons or company that shall be prepared to commence and proceed with the construction of the canal in question.

I should here state to your lordship that, when the treaty was placed under the notice of the chairman of the Committee on Foreign Relations in the Senate, a gentleman of great weight and of the more importance since he belongs to the dominant party in the chamber of which he is a member, considered that it would only be fair that the two governments should give an open and avowed preference by name to an American company which had first conceived and taken steps to carry out the proposed undertaking. This I objected to; but I deemed there could be no objection to giving to any company, under certain fair conditions such as are specified, the preference that was sought, although those conditions applied to a company that was American. In this manner a sort of compromise was effected.

The third alteration adopted is in Article VIII, the whole of which article is remodelled.

This alteration, I must say, was the effect of the joint opinion of Mr. Clayton and myself, both thinking that the article, as amended, was better and more clear, referring especially to two lines of communication which seem the most likely to be adopted, and securing thereby a considerable support to the convention in general, many persons being interested in the Panama and Tehuantepec projects.

The only other change which it is worth while remarking upon occurs the first in the body of the treaty, but was the last mooted or adopted. Your lordship will perceive it by casting your eye over Article I, in which a passage is inserted between the words "Central America," which close the second line in the page, down to "nor will Great Britain or the United States take advantage of any," &c., which occurs in the third line from the bottom of the said page, some few words having been left out to admit of the aforesaid passage. The manner in which this change was effected was as follows:

It struck me that the declaration or note mentioned by your lordship bound our government as to its protection over the Mosquitos, but did not bind the United States Government as to its protection over such other states, even Nicaragua, as it might hereafter form an especial alliance with. Moreover, the pledge that we would not do covertly what we had declared we would not do directly, seemed to me a pledge that it would be more suitable and becoming that both parties should take than that one alone should take.

With these views instead of presenting the note, I embodied in the treaty the substance of the declaration given by your lordship to Mr. Lawrence, constructing that declaration so as to apply to any government or people we do or may protect, and also to any government or people that the United States Government do or may protect. Some discussion took place on this matter, but finally it was so arranged.

As the case now stands it is clearly understood that Her Majesty's Government holds by its own opinions already expressed as to Mosquito, and that the United States does not depart from its opinions also already expressed as to the same subject; but the main question of the canal

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being settled on an amicable basis, and the future relations of the United States and Great Britain being regulated in all other parts of Central America, the discussion of this difference, which has lost its great practical importance, is avoided in an arrangement meant to be as much as possible of a perfectly friendly character.

I need not say that should your lordship wish to make any further statement as to the views of Her Majesty's Government with respect to the protectorate of Mosquito, that statement can still be made; nothing in the present convention is affirmed thereupon, but nothing is abandoned.

I trust that after this statement your lordship will approve of the course I have pursued.

There are various small and verbal differences between the original project and treaty which I have not enumerated, because they leave the general sense the same, and have only been adopted to express that sense more clearly. The word "fortify" is inserted between "occupy and colonize" in the second line from the bottom of the page in Article I, but this word had been used in your lordship's note to Mr. Lawrence, and only imposes in that place an obligation which had already been agreed to and stated elsewhere. The word "blockade" is inserted before the words "detention or capture" in Article II, at the request of several influential persons, but only signifies what detention and capture had already expressed.

H. L. BULWER.

Viscount PALMERSTON, G. C. B.

26.—*Declaration made by Sir Henry Bulwer at the Department of State, June 29, 1850, prior to the exchange of the ratifications of the Clayton-Bulwer treaty.*

In proceeding to the exchange of the ratifications of the convention, signed at Washington on the 19th of April, 1850, between Her Britannic Majesty and the United States of America, relative to the establishment of a communication by ship-canal between the Atlantic and Pacific Oceans:

The undersigned, Her Britannic Majesty's plenipotentiary, has received Her Majesty's instructions to declare that Her Majesty does not understand the engagements of that convention to apply to Her Majesty's settlement at Honduras, or to its dependencies.

Her Majesty's ratification of the said convention is exchanged under the explicit declaration above mentioned.

Done at Washington, the 29th day of June, 1850.

H. L. BULWER.

27.—*Memorandum touching Sir Henry Bulwer's declaration filed by Mr. Clayton in the Department of State at Washington, July 5, 1850.*

The within declaration of Sir H. L. Bulwer was received by me on the 29th day of June, 1850. In reply I wrote him my note of the 4th of July, acknowledging that I understood British Honduras was not embraced in the treaty of the 19th day of April last, but at the same time carefully declining to affirm or deny the British title in their settlement

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or its alleged dependencies. After signing my note last night I delivered it to Sir Henry, and we immediately proceeded, without any further or other action, to exchange the ratifications of said treaty. [* The blank in the declaration was never filled up.] The consent of the Senate to the declaration was not required and the treaty was ratified as it stood when it was made.

JOHN M. CLAYTON.

N. B.—The rights of no central American state have been compromised by the treaty or by any part of the negotiations.

28.—*Charter granted by the State of Nicaragua to the Accessory Transit Company.*

The supreme government of the Republic of Nicaragua, fully authorized by legislative decree of the 13th instant, have agreed, by means of their commissioners, Don Fruto Chamorro and Don Mateo Mayorga, with the sole object of facilitating the construction of the maritime canal, and in accordance with the desires expressed by the company of the said canal, represented by Joseph L. White, esq., to divide and separate from the contract of the 22d of September, 1849, relating to the construction of the said canal through the Isthmus of Nicaragua, the part therein relating to the navigation by steam of the waters of Nicaragua, and to that effect they have agreed to the following convention:

ARTICLE I.

The Republic of Nicaragua authorizes the American, Atlantic, and Pacific Ship-Canal Company to divide and separate from the powers, privileges, and rights granted by the treaty, signed by said government on the 22d September, 1849, and amended the 11th of April, 1850, all the powers, privileges, rights, and duties designated in the Articles 6, 14, 20, 21, 22, 23, 30, 32, 33, 34, and all other articles relating to the navigation of the waters of Nicaragua, not essential to the construction or use of the said ship-canal.

ARTICLE II.

Said company is equally authorized to form another company, distinct and separate, comprised of the same members as the former. This new company shall enjoy the powers and be subject to the duties inserted in the articles aforesaid, provided they are not in contradiction to the rights granted, and to the duties imposed upon the Ship-Canal Company.

ARTICLE III.

The company newly created shall proceed to execute and accomplish the objects of its incorporation, as set forth in the said articles above alluded to, and shall have a right to, and shall have the protection of the Government of Nicaragua, within the same limits and to the same

* The words in brackets appear in the original in ink, but are marked out by lead-pencil marks across their face. When they were so marked is not known. The blanks in the original declaration are filled up with "29th" and "June," written with a different kind of ink from the original.

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extent which have been stipulated in the primary charter of the 22d September, 1849, and its amendments of the 11th of April, 1850, relating to the construction of a ship-canal. All the acts and things which may constitute an infraction of the rights of the Ship-Canal Company, shall equally be considered an infraction of the rights of the company newly created in all that refers to the objects of its institutions.

ARTICLE IV.

The new company, when organized, shall be designated by the name of "The Accessory Transit Company." They shall be a body corporate and politic, with perpetual succession during the time of their legal existence, and they shall have full powers to use their rights and privileges and accomplish fully the duties designated in the present convention and in the aforesaid articles in such manner as may seem to them most convenient and proper, provided that it be not in contradiction to the privileges and duties inserted in the primary charter of the 22d of September, 1849, and amendments thereto of the 11th of April, 1850.

ARTICLE V.

Said company, forming a body corporate and politic, may elect and remove their officers and agents according as they may deem it for their interest; they shall have the faculty of passing and adopting such laws and regulations as they may consider conducive to the better administration of their affairs, in view of securing the enjoyment of their privileges, and for the entire fulfillment of their obligations.

They may fix the amount and value of stock to be issued, and increase the same if necessary; provide the mode of transferring the same, and do all acts and things which are proper and necessary to carry out strictly the purposes of their institution, and according to the abovementioned articles.

ARTICLE VI.

The company, forming a body corporate and politic, shall elect a board of directors and a president, and shall fix the number of the members thereof, the majority of whom shall determine and adopt all resolutions necessary to carrying out the purposes expressed in the preceding articles, and such others as refer to the right of transit and are not inconsistent with the right of constructing and using the canal. The company may adopt a common seal, and change it if necessary. They may sue and be sued before the tribunals of the state as if they were a natural person.

ARTICLE VII.

All the property, choses in action, things, rights, credits, and effects of the new company shall be free from all charges and duties whatsoever during the existence of the grant, within the limits expressed in the primary charter of the 22d September, 1849, and amendments thereto of the 11th of April, 1850, conceded for the construction of a ship-canal, and for other purposes.

ARTICLE VIII.

This convention, and all the rights and privileges secured by it to the company and conferred by it, shall cease whenever the primary charter

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of the 22d of September, 1849, shall expire by its own limitation, or shall be otherwise forfeited or annulled.

ARTICLE IX.

It is understood and agreed by and between the contracting parties that no expression used in this convention can be or shall be construed as relieving either party from the performance of all the obligations imposed upon them respectively by the charter of the 22d of September, 1849, and amendments thereto of the 11th of April, 1850.

Done and signed in duplicate in the city of Granada, of Nicaragua, the fourteenth day of August, one thousand eight hundred and fifty-one.

[SEAL.] FRUTO CHAMORRO,
MATEO MAYORGA,
J. L. WHITE,
Counsel to and Representative of the American and Atlantic and Pacific Ship-Canal Company.

29.—*Mr. Lawrence to Mr. Webster.*

[Extract.]

164.] LEGATION OF THE UNITED STATES,
London, February 27, 1852. (Received March 13.)

SIR: * * * The report of Colonel Childs is looked for with deep interest, and there does not appear any difficulty in associating persons of both countries able to accomplish so great a work whenever a satisfactory survey shall have been completed.

I have, &c.,

ABBOTT LAWRENCE.

30.—*Mr. Lawrence to Mr. Webster.*

[Extract.]

168.] LEGATION OF THE UNITED STATES,
London, March 26, 1852. (Received April 9.)

SIR: Since my dispatch, No. 164, relative to the proposed survey for a route for a canal between the Atlantic and Pacific Oceans, I have heard nothing further from Messrs. Vanderbilt and White, nor have I received the report of Colonel Childs. * * *

As there can probably be but one canal, as that one should be constructed as well for the wants of the future as those of the present, and as it will doubtless absorb in its construction as much of the private capital of both countries as mercantile persons will desire to invest in it, I am anxious that a preliminary survey like the present should be made in such a way as to insure its completion and excite jealousy in neither country.

It is equally the interest of the United States and of Great Britain to connect the two oceans at the earliest practicable period by the best route, without reference to private interests, even though at an aug-

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mented cost of a few millions of dollars. The canal will be remunerative at any rate. But it is understood that neither government will be interested in its construction beyond the guarantee of the treaty of 1850. Yet each may assist by its advice and encouragement. The present British cabinet, following the example of the last, is, I think, inclined to give to private individuals embarking in this scheme, the aid of its countenance. I respectfully suggest that the same course may be pursued at Washington with great benefit to the country by entering into communication with capitalists and others who might be disposed to aid in completing this most important work.

I have, &c.,

ABBOTT LAWRENCE.

31.—*Arrangement for settling Central American affairs agreed upon between Mr. Crampton and Mr. Webster.*

WASHINGTON, *April 30, 1852.*

The undersigned, Daniel Webster, Secretary of State of the United States, and John Fiennes Crampton, Envoy Extraordinary and Minster Plenipotentiary of her Britannic Majesty, having taken into consideration the state of the relations between the Republics of Costa Rica and Nicaragua in respect to the boundaries between those republics, and between the Republic of Nicaragua and the territory claimed by the Mosquito Indians; and being mutually desirous that all pending differences respecting those questions should be amicably, honorably, and definitely adjusted, do in behalf of their respective governments earnestly recommend to the respective governments of the Republics of Nicaragua and Costa Rica an accommodation and settlement of these differences upon the following basis:

ARTICLE I.

The Mosquito Indians may reserve to themselves out of the territory heretofore claimed or occupied by them on the eastern coast of Central America, a district of country, and the jurisdiction over the same to be bounded as follows, namely: beginning on the shore of the Caribbean Sea at the mouth of the river Rama, which is (according to Bailey's map of Central America, published in London in November, 1850) in 11° 34′ north latitude and 83° 46′ west longitude; running thence due west to the meridian 84° 30′ west longitude from Greenwich; thence due north on said meridian to the river Segovia, Fantasma, or Wanx; thence down said river to the Caribbean Sea; thence southerly along the shore of said sea to the place of beginning; and all the rest and remainder of the territory and lands lying southerly or westerly of said reservation heretofore occupied or claimed by the said Mosquitos, including Greytown, they shall relinquish and cede to the Republic of Nicaragua, together with all jurisdiction over the same in consideration of the net receipts for a period of three years from all duties levied and collected at Greytown at the rate of 10 per cent. ad valorem on all goods imported into the State.

The period of three years to commence on the day when Nicaragua shall formally take possession of and enter into the occupancy of said town. And the said net receipts shall be payable quarterly, or every

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three months, to such agent or agents as may be appointed to receive them.

And the said Republic of Nicaragua hereby agrees not in any way to molest or interfere with the Mosquito Indians within the territory herein reserved by them.

It is also understood that any grants of land which may have been made by the said Mosquitos since the 1st of January, 1848, in that part of the Mosquito territory hereby ceded to Nicaragua, shall not be disturbed, provided the said grants shall not interfere with other legal grants made previously to that date by Spain, by the Central American Confederation, or by Nicaragua, or with the privileges or operations of the Atlantic Ship-Canal Company, or Accessory Transit Company, and shall not include territory desired by the Nicaraguan Government for forts, arsenals, or other public buildings.

II.

It is also understood that nothing in the preceding article shall preclude the conclusion of such voluntary compact and arrangements between the State of Nicaragua and the Mosquito Indians, by which the latter may be definitively incorporated and united with the State of Nicaragua, it being stipulated that in such case the said Mosquito Indians shall enjoy the same rights and be liable to the same duties as the other citizens of the said State of Nicaragua. The municipal and public authority in the town of Greytown shall be held and exercised by the Government of Nicaragua, but said government shall levy no duties of tonnage nor any duties of import on goods imported into Greytown, intended for transit across the isthmus or for consumption in any other state than that of Nicaragua, except such tonnage duty as may be necessary for the preservation of the port and harbor, and the erection and maintenance of necessary light-houses and beacons, and no duty for this or similar purposes shall exceed say 12 cents per ton on each vessel.

III.

The boundary between the Republics of Nicaragua and Costa Rica shall begin on the south bank of the Colorado at its confluence with the sea at high-water mark on said river; thence along said south bank, also at high-water mark, to the confluence of the Colorado with the river San Juan; thence, at high water mark, along the south bank of the San Juan to its source on Lake Nicaragua; thence, at high-water mark, along the south and west shore of that lake to the point nearest the mouth of the river La Flor; thence by a direct line drawn from that point to the mouth of the said river in the Pacific Ocean. It is understood, however, that Costa Rica retains the right, in common with Nicaragua, to navigate said rivers and lake by said vessels, barges, or vessels towed, but not by steam; but this right is by no means to interfere with the paramount right in Nicaragua or her grantors to appropriate the waters of said rivers and lake for a ship-canal from ocean to ocean, or from the Caribbean Sea to said lake.

It is also understood that the said company entitled "The American Atlantic and Pacific Ship-Canal Company" shall have the privilege of locating on the south bank of the St. John River four of the eight stations or sections of land referred to in the XXVIIth article of the amended charter of said company, as ratified by the Government of Nicaragua on the 11th of April, 1850. If, however, the said company

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should desire to locate more than the said four sections on the south side of the San Juan, the Governments of Nicaragua and Costa Rica will amicably agree in regard to the terms of such location.

IV.

Neither the Government of Nicaragua nor the Government of Costa Rica should be at liberty to erect, or suffer to be erected, any wharf, wall, embankment, or other structure, or to do, or suffer to be done, any thing or act whatever, in the harbor of Greytown, in any part of the Colorado or San Juan Rivers, or on the shore of Lake Nicaragua, which shall obstruct the free operations of the ship-canal or transit company, or hinder the passage of their boats in, along, and through the said harbor of Greytown and rivers Colorado or San Juan. And if, after the proper survey of a route for a ship-canal between the two oceans, it shall be found that it would be preferable for that canal to pass in part along the southern bank of the river San Juan or the Colorado River, the Government of Costa Rica engages to grant any lands and to afford any facilities which may be necessary for the construction of the said canal.

V.

Whereas it is stipulated by Article II, of the convention between Great Britain and the United States of America, concluded at Washington on the 19th day of April, 1850, that vessels of the United States or Great Britain traversing the said canal shall, in case of war between the contracting parties, be exempt from blockade, detention, or capture by either of the belligerents, and that that provision should extend to such a distance from the two ends of the said canal as might thereafter be found expedient to establish; now, for the purpose of establishing such distance within which the vessels of either of said nations shall be exempt from blockade, detention, or capture by either of the belligerents, it is hereby declared that it shall extend to all waters within the distance of twenty-five nautical miles from the termination of said canal on the Pacific and on the Atlantic coasts.

VI.

Whereas by Article VII of the said convention it was among other things stipulated that if any persons or company had already made with any state through which the ship-canal might pass, a contract for the construction of such a canal as that specified in said convention, to the stipulations of which neither of the contracting parties in that convention had any just cause to object; and the said persons or company had moreover made preparations and expended time, money, and trouble on the faith of such contract, it was thereby agreed that such persons or company should have a priority of claim over every other person or persons, or company, to the protection of the Governments of the United States and Great Britain, and should be allowed a year from the date of the exchange of ratifications of that convention for concluding their arrangements, and presenting evidence of sufficient capital subscribed to accomplish the contemplated undertaking; it being understood that if at the expiration of the aforesaid period, such persons or company should not be able to commence and carry out the proposed enterprise, then the Governments of the United States and Great Britain should be free to afford their protection to any other persons or

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company that should be prepared to commence and proceed with the construction of the canal in question. And whereas at the time of the signature of the said convention, a company styled the American Atlantic and Pacific Ship-Canal Company had with the Government of the Republic of Nicaragua a contract for constructing a ship-canal between the said oceans, but, for reasons deemed sufficient by the Governments of Great Britain and the United States, have not hitherto been able to comply with the stipulation which gave them a claim to the protection of the said governments; and whereas no other company has claimed such protection on the same conditions, it is therefore agreed that the further time of one year from the exchange of the ratifications of this convention shall be allowed to the said company to comply with the stipulation aforesaid.

VII.

And whereas by another charter (of April 11, 1850) to the American Atlantic and Pacific Ship-Canal Company, the State of Nicaragua, with a view to facilitate the construction of the canal, has authorized the said company to separate from their said contract of September 22, 1849, the part relating to the navigation of the waters of Nicaragua by steam, under the title of the Accessory Transit Company; and whereas the said Accessory Transit Company has been for some time past in full and successful operation, the Governments of Great Britain and the United States hereby engage to extend their protection to the said Accessory Transit Company in the same manner and to the same extent as by the aforesaid convention of April 19, 1850, and by this convention the said protection is extended to the Atlantic and Pacific Ship-Canal Company; but as the main object of the said convention between Great Britain and the United States of America was to provide for an interoceanic ship-canal between the Atlantic and Pacific, and as that object is still deemed paramount to every other mode of transit, the protection hereby extended to the Accessory Transit Company shall not be construed to interfere with the right to construct said canal by the company which has undertaken to construct the same, or, in case of their failure, by any other persons or company which may be authorized to construct the same; and every grant and privilege conferred upon said Accessory Transit Company shall be subject to the paramount right and privilege of any other persons or company to construct, maintain, and use such canal.

Finally, these propositions, so far as they respect the Governments of Nicaragua and Costa Rica, are advisory and recommendatory; and the immediate consideration of those governments to their consideration is earnestly invoked.

To insure a prompt decision, Mr. Wyke, consul-general of Her Britannic Majesty, clothed with full powers for that purpose, Mr. Kerr, chargé d'affaires of the United States to Nicaragua, and Mr. Walsh, appointed special agent of the United States to the Government of Costa Rica, are authorized to communicate the arrangement proposed to those governments respectively; and, unless the aforesaid Governments of Nicaragua and Costa Rica shall promptly, and without loss of time, concur in the general basis of this arrangement, and adopt proper measures for carrying it into effect, then the Governments of Great Britain and the United States will immediately, as between themselves, jointly adopt such measures as they shall deem advisable to carry into full execution the convention between those governments of April 19, 1850; and to ac-

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complish the design therein contemplated, of an interoceanic communication by canal from the Atlantic to the Pacific Ocean by the way of the river San Juan and the Lake Nicaragua.

JOHN F. CRAMPTON.
DANL. WEBSTER.

32.—*Mr. Webster to Mr. Lawrence.*

[Extract.]

No. 77.] DEPARTMENT OF STATE,
Washington, May 14, 1852.

SIR: Your dispatches, to No. 176, inclusive, have been received.

On the 30th ultimo, as you may have been informed through another channel, Mr. Crampton and myself agreed upon and signed a proposition to Costa Rica and Nicaragua for the adjustment of their disputes upon the subject of boundary, and also for the adjustment of the controversy between Great Britain and Nicaragua in regard to the territory claimed by the Mosquito Indians. If this proposition should be accepted by those republics, a quadripartite treaty will probably be entered into by them, Great Britain, and the United States. A principal impediment to the commencement or successful progress of the ship-canal through Nicaragua will then have been removed.

Considering that the United States and Great Britain have jointly agreed to protect such a canal, and in consequence of their possessions on the coast of the Pacific, and other obvious causes, have a similar interest in its success, it seems desirable that the capital required for its construction should be advanced by the citizens and subjects of both countries. If, however, English capitalists should not be disposed to invest their funds in the enterprise, the means for its construction can easily be obtained in this country whenever our citizens shall be satisfied of its practicability, and that it would yield a regular and fair profit. Convinced of the great importance of the work, the Government of the United States would always be disposed to aid in the prosecution thereof to the full extent of its constitutional power. It is not likely, however, that the canal company will need any such assistance from this government.

The practicability of the canal may now be considered as certain. The survey under Colonel Childs, whose high professional and personal character are probably known to you, was some time since completed. He recently visited this city, bringing with him maps, plans, and estimates for the work. By direction of the President these were laid before Colonels Abert and Turnbull, of the United States Topographical Engineers, for examination and report. The report of these officers has confirmed the accuracy of the estimates of Colonel Childs. No doubt is entertained that they will receive a similar confirmation from any military or civil engineers in England to whom they may be submitted.

* * * * * * *

I am, &c.,

DAN'L WEBSTER.

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33.—*Mr. Lawrence to Mr. Webster.*

No. 188.] LEGATION OF THE UNITED STATES,
London, June 8, 1852. (Received June 26.)

SIR: I have the honor to acknowledge the reception of your dispatch, No. 77, of 14th of May.

I rejoice to learn that Mr. Crampton and yourself have agreed upon and signed a proposition to Costa Rica and Nicaragua for the adjustment of their disputes upon the subject of boundary, and also for the adjustment of the controversy between Great Britain and Nicaragua in regard to the territory claimed by the Mosquito Indians. I hope Nicaragua will accept the proposition, of which, however, I entertain some doubt.

I am not acquainted with the terms of the proposition, nor, indeed, do I deem them of great importance, so that they guarantee perfect safety against aggressions upon the rights of the several parties interested, and prevent collisions between the United States and Great Britain.

With respect to the construction of the canal, I have often expressed my anxious desire that all questions touching the Mosquito Indians and the disputes between Nicaragua and Costa Rica should be definitively settled, in order that the canal company might be organized and the work commenced. In December last, Messrs. Vanderbilt and White wrote to me and to several other persons in London that the report of Colonel Childs would be completed and sent here in February of this year. The report, however, did not arrive, nor do I know the cause of its being delayed. Messrs. Fox, Henderson & Co., after waiting several weeks for it, concluded to send out a corps of engineers on their own account to survey a route between Port Escoces and the Gulf of San Miguel (and perhaps other routes) for a canal. It was proposed to send a British and United States engineer to report upon their surveys, and Lord Malmesbury appointed one on the part of the British Government, who was on the point of embarking for Washington, when, from some cause which his lordship said he would explain, it was decided not to send an engineer. I believe I have already communicated these facts to you. I hope the report of Colonel Childs may soon arrive, as the abundance of money is such as to make the present time favorable for the organization of a company and placing the stock in the hands of capitalists.

I have great confidence in the skill, judgment, and integrity of Colonel Childs; and the fact that Colonels Abert and Turnbull have verified his report will give confidence at home and abroad. I hope the report may be submitted to an examination here in order that a like feeling may be produced and strengthened in this government and people.

There is an understanding among those who have taken a deep interest in this work, that one-half of the stock should be offered to capitalists here, and the remainder to capitalists in the United States, and in case either party declined or did not subscribe for their full amount the other party should have a right to that portion remaining unsubscribed, or the whole if there were no subscriptions. The details, however, of organization must all be left to the proprietors.

I repeat the desire that Colonel Childs' report (and the colonel himself) may be here at an early day, and have, &c.

ABBOTT LAWRENCE.

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34.—*Mr. Lawrence to Mr. Webster.*

[Extract.]

No. 194.] LEGATION OF THE UNITED STATES,
London, July 2, 1852. (Received July 16.)

SIR: * * * I have the honor to transmit also a copy of a note from the Earl of Malmesbury acquainting me with the appointment on the part of Her Majesty's Government of two engineers to examine the report of Colonel Childs respecting the ship canal which it is proposed to construct through the territory of Nicaragua from the Atlantic to the Pacific Ocean, together with a copy of my reply thereto. Lieutenant-Colonel Aldrich and Mr. James Walker, the gentlemen appointed to this service, are eminent in their profession, and any opinion emanating from them will be received by the public with the fullest confidence in their ability and integrity.

* * * * * * *

I have, &c.,

ABBOTT LAWRENCE.

Earl of Malmesbury to Mr. Lawrence.

The Earl of Malmesbury presents his compliments to Mr. Lawrence, and with reference to his letter of the 16th instant, inclosing Colonel Childs' report respecting the ship-canal which it is proposed to construct through the territory of Nicaragua, from the Atlantic to the Pacific Ocean, and suggesting the appointment of two competent engineers to examine that report, has the honor to inform Mr. Lawrence that Lieutenant-Colonel Aldrich, of the Royal Engineers, and Mr. James Walker, the eminent civil engineer, have been appointed by Her Majesty's Government to examine Colonel Childs' report.

Lord Malmesbury begs to add that he has requested the master general of the ordnance to direct Colonel Aldrich to place himself in immediate communication with Mr. Walker, and to proceed to the investigation with the least possible delay.

FOREIGN OFFICE, *June 30, 1852.*

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r. Lawrence to Earl of Malmesbury.

Mr. Lawrence presents his compliments to the Earl of Malmesbury and begs to acknoweldge the reception of his lordship's note of the 30th instant, acquainting Mr. Lawrence with the appointment of Lieutenant-Colonel Aldrich, of the Royal Engineers, and Mr. James Walker, the eminent civil engineer, to examine the report of Colonel Childs, respecting the ship-canal which it is proposed to construct through the territory of Nicaragua from the Atlantic to the Pacific Ocean.

Mr. Lawrence begs to assure the Earl of Malmesbury of his entire satisfaction at this intelligence, and to express his sense of his lordship's courtesy in expediting the investigation.

UNITED STATES LEGATION,
138 Piccadilly, July 2, 1852.

35.—*Proclamation of the organization of the British colony of the Bay Islands, July 17, 1852.*

PROCLAMATION.

OFFICE OF THE COLONIAL SECRETARY,
Belize, July 17, 1852.

This is to give notice that Her Most Gracious Majesty the Queen has been pleased to constitute and make the islands of Roatan, Bonacca,

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Utilla, Barbarat, Helene, and Morat, to be a colony to be known and designated as "The Colony of the Bay Islands."

AUGUSTUS FREDERICK GORE,
Acting Colonial Secretary.

God save the Queen!

36.—*Mr. Lawrence to Mr. Webster.*

No. 198.] LEGATION OF THE UNITED STATES,
London, August, 13 1852. (Received August 27.)

SIR: I have the honor to inclose a further correspondence between Lord Malmesbury and myself relative to Colonel Childs' report upon the ship-canal between the Atlantic and Pacific Oceans by way of Lake Nicaragua. Lieutenant-Colonel Aldrich and Mr. Walker, the engineers appointed by Lord Malmesbury to examine the report made by Colonel Childs, have reported that the project in the line projected by Colonel Childs is practicable; that the survey made by him has every appearance of accuracy; that the works are generally sufficient for the purpose they are intended to answer; and that the estimates upon the present value of money are adequate. The British capitalists have the matter now under consideration. I have delayed sending you th correspondence, hoping to give you their decision with it.

I have, &c.,

ABBOTT LAWRENCE.

Lord Malmesbury to Mr. Lawrence.

Immediate.]

FOREIGN OFFICE, *July 16, 1852.*

SIR: In compliance with the suggestion contained in your letter of the 16th ultimo, that engineers possessing well-known skill and experience should be appointed on the part of Her Majesty's Government to examine the report of Colonel Childs on the ship-canal to be constructed through the Nicaraguan territory, from the Atlantic to the Pacific Ocean, that report having been already examined and approved by Colonels Abert and Turnbull, two distinguished officers of the Topographical Engineers of the United States, I have the honor to inform you that Lieutenant-Colonel Aldrich, of the Royal Engineers, and Mr. James Walker, an eminent civil engineer, were accordingly requested by me to perform that duty.

Those gentlemen readily assented to that request, and I have now the honor to transmit to you their report, accompanied by four inclosures upon the papers submitted to their inspection, being the documents which were inclosed in your letter of the 21st of June.

I have, &c.,

MALMESBURY.

Mr. Lawrence to Lord Malmesbury.

LEGATION OF THE UNITED STATES,
138 Piccadilly, July 17, 1852.

MY LORD: I have the honor to acknowledge the receipt of your lordship's letter of the 16th, inclosing the report of Lieutenant-Colonel Aldrich and Mr. James Walker upon Colonel Childs' report on the ship-canal to be constructed through the Nicaraguan territory, from the Atlantic to the Pacific Ocean, and I beg your lordship to accept my thanks for the great promptness with which you have complied with my request in this matter.

I have, &c.,

ABBOTT LAWRENCE.

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[Extract.]

REPORT OF THE BRITISH ENGINEERS UPON THE REPORT OF COLONEL CHILDS.

From the foregoing premises and subject to our observations on particular works (especially as to Brito Harbour), *to which we beg to refer*, our opinion, with reference to the propositions contained in your letter to Mr. Walker, is—

1. That the project of a ship-canal from the Atlantic to the Pacific on a line projected by Colonel Childs is practicable, and would not be attended with engineering difficulties beyond what might be naturally expected in a work of this magnitude.

2. That the survey has every appearance of accuracy; that the details of specifications, working-drawings, &c., prepared under Colonel Childs' directions, by Mr. Fay, Mr. Fitzgerald, and others, have been got out with great care, and that Colonel Childs has impressed us with a conviction of perfect fairness and candor on his part.

3. That the works are generally sufficient for the purpose they are intended to answer.

4. That the estimates upon *the present value of money* are adequate, in a general way, so far as judgment can be formed of them from the documents produced and the explanations of Colonel Childs, which, as will be seen from his evidence, were particular and given in great detail.

We shall perhaps be considered as interpreting the word "*sufficiency*" in your instructions in a liberal sense, when we add, that to make the navigation 20 feet deep in place of 17 feet, and the locks 300 feet long in place of 250, and the canal 60 feet in place of 50 feet wide,* would, in our opinion, be rendering the navigation more efficient for the general purposes of trade by steam and sailing vessels. Colonel Childs (see his answers to questions 223 and 224) does not see any difficulty in doing this, excepting the expense, which would, we think, be unimportant when compared with the advantages.

The great additional expense would be in the deep cutting west of the lake, two or three miles of which might be left of the smaller width, if present saving be a great object. We find that the original instructions to Colonel Childs† directed the estimates and surveys to be made for a canal of sufficient depth of water for vessels of the largest class; and if the junction of the Pacific with the Atlantic be worth doing at all, it is worth doing *well*.

JAMES WALKER,
Civil Engineer.
EDWARD ALDRICH,
Captain and Lieutenant-Colonel, Commander Royal Engineers, London District.

LONDON, *July 16, 1852.*

37.—*Mr. Marcy to Mr. Borland.*

[Extract.]

No. 8.] DEPARTMENT OF STATE,
Washington, December 30, 1853.

SIR: Your several dispatches, to No. 11, inclusive, have been received at this Department.

In relation to the Clayton and Bulwer treaty, about which so much is said in your dispatches, I have only to remark that this government considers it a subsisting contract, and feels bound to observe its stipulations so far as by fair construction they impose obligations upon it.

If Great Britain has failed, or shall fail, on her part to fulfill the obligations she has therein assumed, or if she attempts to evade them by a misconstruction of that instrument, the discussions that may arise on these subjects must necessarily take place between the parties to it. The views taken of that treaty by the United States, and your course in relation to it, pointed out in your first instructions, will be observed

* The remark may apply more particularly to the trade with Britain, for which vessels upwards of 300 feet in length are now building or proposed.

† See page 4, Colonel Childs' Report.

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until you receive notice of their modification. In these instructions you were furnished with the views of one of the contracting parties (Great Britain), but at the same time you were informed that the United States did not concur in them. In the negotiations at London, in regard to the affairs of Central America, the meaning of that instrument will come directly under discussion. So far as respects your mission, you will regard it as meaning what the American negotiator intended when he entered into it, and what the Senate must have understood it to mean when it was ratified, viz, that by it Great Britain came under engagements to the United States to recede from her asserted protectorate of the Mosquito Indians, and to cease to exercise dominion or control in any part of Central America. If she had any colonial possessions therein at the date of the treaty, she was bound to abandon them, and equally bound to abstain from colonial acquisitions in that region. In your official intercourse with the states of Central America, you will present this construction of the treaty as the one given to it by your government.

It is believed that Great Britain has a qualified right over a tract of country called the Belize, from which she is not ousted by this treaty, because no part of that tract, when restricted to its proper limits, is within the boundaries of Central America.

* * * * * * *

I am, &c.,

W. L. MARCY.

38.—*Statement of Mr. Buchanan for Lord Clarendon.*

[Extract.]

LEGATION OF THE UNITED STATES,
London, January 6, 1854.

Mr. Monroe, one of our wisest and most discreet Presidents, announced in a public message to Congress in December, 1823, that "the American continents, by the free and independent condition which they have assumed and maintained, are henceforth not to be considered subjects for future colonization by any European powers." This declaration has since been known throughout the world as the "Monroe doctrine," and has received the public and official sanction of subsequent Presidents, as well as of a large majority of the American people. Whilst this doctrine will be maintained whenever, in the opinion of Congress, the peace and safety of the United States shall render this necessary, yet to have acted upon it in Central America might have brought us into collision with Great Britain, an event always to be deprecated, and, if possible, avoided. We can do each other the most good, and the most harm, of any two nations in the world, and, therefore, it is our strong mutual interest as it ought to be our strong mutual desire, to remain the best friends. To settle these dangerous questions, both parties wisely resorted to friendly negotiations, which resulted in the convention of April, 1850. May this prove to be instrumental in finally adjusting all questions of difficulty between the parties in Central America, and in perpetuating their peace and friendship.

Surely the Mosquito Indians ought not to prove an obstacle to so happy a consummation.

* * * * * * *

JAMES BUCHANAN.

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39.—*Statement of Lord Clarendon for Mr. Buchanan.*

[Extract.]

FOREIGN OFFICE, *May 2, 1854.*

* * * * * * *

It was never in the contemplation of Her Majesty's Government, nor in that of the Government of the United States, that the treaty of 1850 should interfere in any way with Her Majesty's settlement at Belize or its dependencies. It was not necessary that this should have been particularly stated, inasmuch as it is generally considered that the term "Central America"—a term of modern invention—could only appropriately apply to those states at one time united under the name of the "Central American Republics," and now existing as five separate republics; but, in order that there should be no possible misconception at any future period relative to this point, the two negotiators at the time of ratifying the treaty exchanged declarations to the effect that neither of the governments they represented had meant in such treaty to comprehend the settlement and dependencies in question.

Mr. Clayton's declaration to Her Majesty's Government on this subject was ample and satisfactory, as the following extract from his note of July 4, 1850, will show:

> The language of the first article of the convention concluded on the 19th day of April last, between the United States and Great Britain, describing the country not to be occupied, &c., by either of the parties, was, as you know, twice approved by the government, and it was neither understood by them nor by either of us [the negotiators] to include the British settlement in Honduras (commonly called British Honduras, as distinct from the state of Honduras) nor the small islands in the neighborhood of that settlement which may be known as its dependencies.
>
> To this settlement and these islands the treaty we negotiated was not intended by either of us to apply. The title to them is now and has been my intention throughout the whole negotiation to leave as the treaty leaves it, without denying or affirming or in any way meddling with the same, just as it stood previously.
>
> The chairman of the Committee on Foreign Relations of the Senate, the Hon. W. N. King, informs me that the Senate perfectly understood that the treaty did not include British Honduras.

Such having been the mutual understanding as to the exception of the settlement of Belize and its dependencies from the operation of the treaty, the only question relative to this settlement and its dependencies in reference to the treaty that can now arise is as to what is the settlement of Belize and its dependencies, or, in other words, as to what is British Honduras and its dependencies.

Her Majesty's Government certainly understood that the settlement of Belize as here alluded to is the settlement of Belize as established in 1850; and it is more warranted in this conclusion from the fact that the United States had, in 1847, sent a consul to this settlement, which consul had received his exequatur from the British Government—a circumstance which constitutes a recognition by the United States Government of the settlement of British Honduras under Her Majesty as it then existed.

Her Majesty's Government at once states this, because it perceives that Mr. Buchanan restricts the said settlement within the boundaries to which it was confined by the treaty of 1786, whilst Her Majesty's Government not only has to repeat that the treaties with old Spain cannot be held, as a matter of course, to be binding with respect to all the various detached portions of the old Spanish-American monarchy,

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but it has also to observe that the treaty of 1786 was put an end to by a subsequent state of war between Great Britain and Spain; that during that war the boundaries of the British settlement in question were enlarged; and that when peace was re-established between Great Britain and Spain no treaty of a political nature, or relating to territorial limits, revived those treaties between Great Britain and Spain which had previously existed.

Her Majesty's Government, in stating this fact, declares distinctly, at the same time, that it has no projects of political ambition or aggrandizement with respect to the settlement referred to; and that it will be its object to come to some prompt, fair, and amicable arrangement with the states in the vicinity of British Honduras for regulating the limits which should be given to it, and which shall not henceforth be extended beyond the boundaries now assigned to them.

* * * * * * *

CLARENDON.

40.—*Remarks by Mr. Buchanan in reply to Lord Clarendon's statement of May 2.*

[Extract.]

LEGATION OF THE UNITED STATES,
London, July 22, 1854.

* * * * * * *

In regard to Belize proper, confined within its legitimate boundaries, under the treaties of 1783 and 1786, and limited to the usufruct specified in these treaties, it is necessary to say but a few words. The Government of the United States will not, for the present, insist upon the withdrawal of Great Britain from this settlement, provided all the other questions between the two governments concerning Central America can be amicably adjusted. It has been influenced to pursue this course partly by the declaration of Mr. Clayton, of the 4th of July, 1850, but mainly in consequence of the extension of the license granted by Mexico to Great Britain under the treaty of 1826, which that republic has yet taken no steps to terminate.

It is, however, distinctly to be understood that the Government of the United States acknowledge no claim of Great Britain within Belize except the temporary "liberty of making use of the wood of the different kinds, the fruits, and other produce in their natural state," fully recognizing that the former "Spanish sovereignty over the country" belongs either to Guatemala or to Mexico.

In conclusion, the Government of the United States most cordially and earnestly unites in the desire expressed by "Her Majesty's Government, not only to maintain the convention of 1850 intact, but to consolidate and strengthen it by strengthening and consolidating the friendly relations which it was calculated to cement and perpetuate." Under these mutual feelings it is deeply to be regretted that the two governments entertain opinions so widely different in regard to its true effect and meaning.

JAMES BUCHANAN.

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41.—*Decree of the President of Nicaragua annulling the grant to the American Atlantic and Pacific Ship-Canal Company.*

Whereas the Republic of Nicaragua, on the 22d day of September, 1840 (one thousand eight hundred and forty-nine), granted to the American Atlantic and Pacific Canal Company certain rights and privileges, were subsequently modified by decree of the 11 day of April, 1850 (one thousand eight hundred and fifty), and whereas, in consideration of said rights and privileges, said company agreed to construct a ship-canal across the territory of said republic from the port of San Juan de Nicaragua to the port of Realejo, Gulf of Fonseca, Tamarinda, San Juan del Sud, or any of the points on the Pacific Ocean which the engineers of the company might decide upon, or in case that the construction and completion of said canal or any point of it should become impossible, by any unforeseen event or insurmountable obstacle of nature, to construct a railroad or rail & carriage road and water communication between the two oceans; and

Whereas the said American Atlantic and Pacific Ship-Canal Company have not constructed the said canal or commenced the same, but, on the contrary, has abandoned the undertaking and declared it impracticable, and have also failed to construct a railroad or rail and carriage road, as they agreed to do; and

Whereas the said American Atlantic and Pacific Ship-Canal Company was bound by the terms of said charter to pay the Republic of Nicaragua ten thousand dollars annually, and ten per cent. on the net profits of any route the company might establish between the two oceans during the time allotted for the completion of the canal and in furtherance thereof; and

Whereas the said American Atlantic and Pacific Canal Company have failed to pay annually said ten thousand dollars, together with the said ten per cent. net profits, falsely and fraudulently alleging that no profits were made and commission due; and

Whereas, by the said charter, it was stipulated that, for the purpose of settling all matters in dispute between the state and the company, commissioners should be appointed by the state on the one part and the company on the other; and

Whereas, on the 12th day of September, 1855 (one thousand eight hundred and fifty-five), the Republic of Nicaragua notified the said company to appoint commissioners under the charter, and the said company expressly refused the same; and

Whereas, by decree of the 9th day of March, 1850 (one thousand eight hundred and fifty), the said company was made a body politic and corporate, with perpetual succession, by the name and description of "The American Atlantic and Pacific Ship-Canal Company"; and

Whereas, on the 14th day of August, 1851 (one thousand eight hundred and fifty-one), the Republic of Nicaragua, with the sole object of facilitating the maratime canal, and in accordance with the desires expressed by the company of said canal to divide and separate from the contract of 22d September, 1849 (one thousand eight hundred and forty-nine), the part therein relating to the navigation by steam of the waters of Nicaragua, did constitute a new company, designated by the name of "Accessory Transit Company," and consisting of the same persons comprising the American Atlantic and Pacific Ship-Canal Company, and subject to the same obligations: Now, therefore,

The supreme provisional Government of Nicaragua, in virtue of the faculties,

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DECREES:

1. The grant to the American Atlantic and Pacific Canal Company, of date 22d September, 1849 (one thousand eight hundred and forty-nine), and the modifications thereof, made 11th day of April, 1850 (one thousand eight hundred and fifty), and all the privileges therein contained, are *revoked* and *annulled;* the acts of incorporation of said company, of date 9th day of March, 1850 (one thousand eight hundred and fifty), and of the "Accessory Transit Company," of date 14 day of August, 1851 (one thousand eight hundred and fifty-one), *are annulled*, and the said American Atlantic and Pacific Ship-Canal Company and Accessory Transit Company *are dissolved and abolished*, except for the purposes hereinafter mentioned.

2. Señor Don Cleto Mayorga, Señor Don Eduardo I. C. Kewen, and Señor Don George F. Alden (any two of whom may act) are hereby appointed a board of commissioners, with full powers to *examine*, *liquidate*, and *ascertain* the amount due by the said American Atlantic and Pacific Canal Company and Accessory Transit Company to the state, with full powers to send for persons and papers, and to enforce respect and obedience to all their orders and decrees.

3. The said board shall proceed at once to discharge these duties, and for this purpose shall notify the agent of the companies residing in Nicaragua to appear before them forthwith, to give all evidence that may be required of them, and with the privilege to defend the interest of their principals.

4. The said companies shall be considered still in existence for the purpose of conducting this examination, and for the purpose of being held collectively responsible for such sum as may be ascertained to be due to the state, but for no other.

5. For the purpose of securing the payment of such amount the said board find due, they are hereby commanded to cause all the property of said companies to be seized forthwith and held by responsible persons, subject to the order of said board.

6. That the transit of passengers across this isthmus may suffer no interruption the board are authorized to deliver to such responsible persons as may make application all the said property so seized upon their executing a bond in a sum one-fourth greater than its appraised value, and with the conditions that the same shall be forthcoming when called for by the said board, and that the undertakers in the bond shall continue to transport the passengers who may arrive on the side of the Atlantic & Pacific Oceans, and the expenses of transporting said passengers shall be charged against the said companies.

7. Before allowing the said property to be bonded the board shall cause the same to be fairly approved by three competent persons appointed for the purpose.

8. The board shall proceed summarily and with dispatch, and on determining the amount due from the companies to the state shall report their proceedings immediately to the government.

9. The compensation of the board of commissioners, as well as of the board of appraisers, by them appointed, will be hereafter determined.

10. Let this be communicated to the proper authorities.

Given at Granada the 18th day of February, 1856.

PATRICIO RIVAS.

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42.—Additional article to the treaty of friendship, commerce, and navigation between Great Britain and Honduras, signed at London, August 27, 1856.

Inasmuch as a contract was entered into by the Government of Honduras, and a company entitled "The Honduras Interoceanic Railway Company," for the construction of a railway from the Atlantic to the Pacific Oceans through the territories of Honduras, which contract was ratified by the constitutional powers of the state, and proclaimed as a law on the 28th day of April, 1854; and inasmuch as by the terms of Article V, section 6, of the said contract, "the Government of Honduras, with a view to secure the route herein contemplated from all interruption and disturbance, from any cause or under any circumstances, engages to open negotiations with the various governments with which it may have relations, for their separate recognition of the perpetual neutrality, and for the protection of the aforesaid route:" Therefore, in order to carry out the obligation thus incurred,

1. The Government of Honduras agrees that the right of way or transit over such route or road, or any other that may be constructed through its territories, from sea to sea, shall be at all times open and free to the Government and subjects of Great Britain, for all lawful purposes whatever. No tolls, duties, or charges of any kind shall be imposed by the Government of Honduras on the transit of property belonging to the Government of Great Britain, or on the public mails sent under the authority of the same, nor on the subjects of the British Crown. All lawful produce, manufactures, merchandise, or other property belonging to subjects of Great Britain, passing from one ocean to the other, in either direction, shall be subject to no import or export duties whatever, nor to any discriminating tolls or charges for conveyance or transit on any such route or road as aforesaid, and shall be secure and protected from all interruption and detention on the part of the state.

The Republic of Honduras further agrees that any other privilege or advantage, commercial or other, which is or may be granted to the subjects or citizens of any other country in regard to any such route or road as aforesaid, shall be also and at the same time extended to British subjects; and, finally, as an evidence of its disposition to accord to the travel and commerce of the world all the advantages resulting from its position in regard to the two great oceans, the Republic of Honduras, of her own good will, engages to establish the ports at the extremities of the contemplated road as free ports for all the purposes of commerce and trade.

2. In consideration of these concessions, and in order to secure the construction and permanence of the route or road herein contemplated, and also to secure for the benefit of mankind the uninterrupted advantages of such communication from sea to sea, Her Britannic Majesty recognizes the rights of sovereignty and property of Honduras in and over the line of the said road, and for the same reason guarantees, positively and efficaciously, the entire neutrality of the same so long as Great Britain shall enjoy the privileges conceded to it in the preceding section of this article. And when the proposed road shall have been completed Her Britannic Majesty equally engages, in conjunction with the Republic of Honduras, to protect the same from interruption, seizure, or unjust confiscation from whatsoever quarter the attempt may proceed.

Nevertheless, Her Britannic Majesty, in according her protection to the said route or road, and guaranteeing its neutrality and security

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when completed, always understands that this protection and guarantee are granted conditionally, and may be withdrawn by her if she should deem that the persons or company undertaking or managing the same adopt or establish such regulations concerning the traffic thereupon as are contrary to the spirit and intention of this article, either by making unfair discriminations in favor of the commerce of any nation or nations over the commerce of any other nation or nations, or by imposing oppressive exactions or unreasonable tolls upon passengers, vessels, goods, wares, merchandize, or other articles.

The aforesaid protection and guarantee shall not, however, be withdrawn by Her Britannic Majesty without first giving six months' notice to the Republic of Honduras.

The present additional article shall have the same force and validity as if it were inserted word for word in the treaty of friendship, commerce, and navigation signed this day. It shall be ratified, and the ratifications shall be exchanged at the same time; and its stipulations shall, subject to the same condition of notice on the part of Her Britannic Majesty, provided for in the preceding paragraph of this article, be permanent between the contracting parties.

In witness whereof the respective plenipotentiaries have signed the same and have affixed thereto their respective seals.

Done at London the 27th day of August, in the year of our Lord 1856.

[L. S.] CLARENDON.
[L. S.] VR. HERRAN.

43.—*Lord Napier to Lord Clarendon.*

No. 5.] WASHINGTON, *March 12, 1857.* (Received March 29.)

MY LORD: I had this afternoon an interview with General Cass, when I requested that he would communicate to me the views taken in the Senate with reference to the Central American treaty, as far as was consistent with the secrecy of the pending deliberation.

The Secretary of State replied that the subject was at that very hour under discussion, and that opinions were divided in the following manner: Some held that the treaty should be sanctioned in its original form, others that it should be accepted with certain modifications, while a third party advocated its rejection, but proposed to temper this course by the adoption of certain resolutions embodying sentiments of a friendly disposition towards Great Britain, and approving a settlement of the Central American question in conformity with the spirit of the treaty agreed to by your lordship and Mr. Dallas. General Cass appeared to anticipate that the last alternative would prevail.

I remarked that I was not surprised by the result which he predicted, for impressions of a similar character had been imparted to me at New York; but I added that Her Majesty's Government would certainly learn with concern that all the efforts of Mr. Dallas, aided by your lordship's generous co-operation, had not succeeded in framing an arrangement acceptable to the Senate; such an issue had not been anticipated by the United States minister, and your lordship's expectations of the success of the treaty had been confirmed by the intelligence derived from Mr. Dallas that he (General Cass) had given the measure his support in the first instance.

The Secretary of State explained that at an early period a general outline of the projected arrangement had reached him, and had certainly

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obtained his warm approval, but that when he came to know the details more accurately he recognized in them principles of foreign intervention repugnant to the policy of the United States. The treaty engaged the Government of the United States to combine with that of Great Britain in urging a certain course of conduct on a foreign state. This could not be allowed; it was not consistent with the common practice of his country. The object, indeed, was good, and he hoped it might be attained in another shape. It might be prosecuted by a direct and distinct negotiation between Great Britain and Nicaragua, in which Her Majesty's Government would, if necessary, have the good offices of the President.

General Cass then passed some reflections on the Clayton-Bulwer treaty; he had voted for it, and in doing so he believed that it abrogated all intervention on the part of England in the Central American territory. The British Government had put a different construction on the treaty, and he regretted the vote he had given in its favor. He did not, however, pretend that the British Government should now unconditionally abandon the Mosquitos with whom they had relations of an ancient date; it was just and consistent with the practice of the United States that those Indians should be secured in the separate possession of lands, the sale of which should be prohibited, and in the enjoyment of rights and franchises, though in a condition of dependency and protection. The British Government had already removed one impediment to the execution of the Bulwer-Clayton treaty by the cession of their claims on Ruatan; two difficulties now remained, the frontier of Belize and the delimitation and settlement of the Mosquito tribe. If the frontier could be defined, and if the Mosquitos could be placed in the enjoyment of their territory by treaty between Great Britain and Nicaragua, in which the concessions and guarantees of the latter in favor of the Indians should be associated with the recognition of the sovereignty of Nicaragua—so I understood the general—then the Bulwer-Clayton treaty might be a permanent and satisfactory settlement between the contracting parties. The United States desired nothing else but an absolute and entire neutrality and independence of the Central American region, free from the exercise of any exclusive influence or ascendency whatever.

The Secretary of State terminated a rather desultory conversation on these matters by stating that his present remarks were to be regarded as of a merely general and speculative nature. The Senate had not yet pronounced; as soon as the decision was known and the resolutions taken they should be transmitted to your lordship through Mr. Dallas, and communicated to myself.

General Cass, before I took my leave, offered me an emphatic assurance of good will to the Government of Great Britain, and expressed the satisfaction which he hoped to find in his correspondence with Her Majesty's mission.

I have, &c.,

NAPIER.

The EARL OF CLARENDON.

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44.—*Lord Napier to Lord Clarendon.*

[Extract.]

No. 14.] WASHINGTON, *May* 6, 1857. (Received May 25.)

On receiving your lordship's dispatch of the 17th ultimo on the 2d instant, informing me that Her Majesty's Government had not found it expedient to ratify the Central American treaty in its altered shape, and instructing me to propose the conclusion of a new treaty embodying all the resolutions of the United States Senate, with the single addition framed as a safeguard for British interests in the Bay Islands, I determined not to carry your lordship's orders into execution without previously soliciting an interview with the President. His excellency did me the honor to appoint an early day for this purpose, but an attack of illness prevented me from availing myself of his goodness, and it was not until this afternoon that I was enabled to pay my respects to his excellency.

I found the President fully informed of the grounds on which Her Majesty's Government had based their resolution, and of their desire to enter into new engagements, but I think he entertained an impression that the reason alleged by Her Majesty's Government did not really express the whole or the most cogent motive of their objections, and he was not apprised of the terms of the simple qualification which Her Majesty's Government propose to add to the treaty as modified by the Senate.

I placed your lordship's instructions in the hands of the President. He assured me that he was now quite convinced that the non-ratification of the Honduras treaty formed the true and only motive for the rejection of that negotiated by your lordship with Mr. Dallas; that he could hardly understand the importance attached to this point by Her Majesty's Government; that he deeply regretted their determination, and that it was the last ground on which he had anticipated any reluctance.

The President thought Her Majesty's Government had acted unwisely in neglecting this opportunity to close the Central American discussions and place the relations of the two countries on a satisfactory basis at a moment when the public feeling was so friendly on either side of the Atlantic.

After reading the article proposed by Her Majesty's Government he told me, not without some appearance of regret, that unless he changed his opinion, of which he saw little prospect, he could not assent to a stipulation which would involve the recognition by his government of a treaty between Great Britain and Honduras relative to the Bay Islands, and if he did accept such a stipulation it would infallibly be rejected by the Senate.

I argued that whatever there was repugnant to the feelings of the Senate in reference to slavery, or whatever there was unacceptable in regard to trade or government in the treaty of August 27, 1856, might be subjected to some change, and I offered to bring his views on this subject under your lordship's notice, but his excellency held out no hope; his objection pointed to the recognition of any treaty at all—to the bare allusion to it. Great Britain and Honduras might frame any settlement they pleased for the future government of the islands; it was their business, not that of the United States. The United States could not take cognizance of those arrangements in any degree, however remote and indirect.

Finding the President quite firm in this position, I shifted the discus-

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sion to the relations of the two countries in case of the official rejection of your lordship's present proposal, remarking that we should fall back on the Clayton-Bulwer treaty, a basis which, if not fixed by arbitration or in some other way, would break up under our feet.

The President denounced the Clayton-Bulwer treaty as one which had been fraught with misunderstanding and mischief from the beginning; it was concluded under the most opposite constructions by the contracting parties. If the Senate had imagined that it could obtain the interpretation placed upon it by Great Britain, it would not have passed. If he had been in the Senate at the time, that treaty never would have been sanctioned. With reference to arbitration (which I had only thrown in as a suggestion of my own), he observed that he could not give any opinion at present. The President also inveighed against the success of treaties, affirming that they were more frequently the cause of quarrel than of harmony, and that, if it were not for the interoceanic communications, he did not see there was any necessity for a treaty respecting Central America at all.

NAPIER.

The EARL OF CLARENDON.

45.—*General Cass to Lord Napier.*

WASHINGTON, *May 29, 1857.*

MY LORD: I have received your lordship's note of the 6th instant, communicating the resolution of the British Government to advise the Queen not to ratify the treaty of the 17th October, 1856, respecting the affairs of Central America, and which had been modified by the Senate of the United States, and in its modified form submitted for the consideration and action of your government. I have laid before the President this note, together with the accompanying projet of a new treaty, and I have received his instructions to make known to you his views upon the subject.

The Clayton-Bulwer treaty, concluded in the hope that it would put an end to the differences which had arisen between the United States and Great Britain concerning Central American affairs, had been rendered inoperative in some of its most essential provisions by the different constructions which had been reciprocally given to it by the parties; and little is hazarded in saying that had the interpretation since put upon the treaty by the British Government, and yet maintained, been anticipated it would not have been negotiated under the instructions of any Executive of the United States nor ratified by the branch of the government intrusted with the power of ratification.

A protracted discussion, in which the subject was exhausted, failed to reconcile the conflicting views of the parties; and as a last resort a negotiation was opened for the purpose of forming a supplementary treaty which should remove, if practicable, the difficulties in the way of their mutual good understanding, and leave unnecessary any further discussion of the controverted provisions of the Clayton-Bulwer treaty. It was to effect this object that the Government of the United States agreed to open the negotiations which terminated in the treaty of October 17th, 1856, and though the provisions of that instrument, even with the amendments proposed by the Senate, were not wholly unobjectionable either to that body or to the President, still, so important

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did they consider a satisfactory arrangement of this complicated subject that they yielded their objections and sanctioned, by their act of ratification, the convention as amended. It was then transmitted to London for the consideration of Her Britannic Majesty's Government, and having failed to meet its approbation has been returned unratified. The parties are thus thrown back upon the Clayton-Bulwer treaty, with its disputed phraseology and its conflicting interpretations; and, after the lapse of seven years, not one of the objects connected with the political condition of Central America, which the United States had hoped to obtain by the arrangement, has been accomplished.

Under these circumstances your lordship informs me that the British Government, appreciating the differences which this subject has caused "between the two countries," have determined to propose to the United States the conclusion of a new treaty, and in conformity with your instructions this proposition is accompanied with the *projet* of a convention which, if ratified by the President and Senate of the United States, it is engaged will be ratified by Her Britannic Majesty.

The draft presented is identical in its language with the treaty of October, as ratified by the Senate, except that to that clause of the second separate article which provides for the recognition of the Bay Islands "as under the sovereignty and as part of the Republic of Honduras" there is added the provision:

> Whenever and so soon as the Republic of Honduras shall have concluded and ratified a treaty with Great Britain by which Great Britain shall have ceded, and the Republic of Honduras shall have accepted, the said islands, subject to the provisions and conditions contained in the said treaty.

This provision is a substitute for the provision relating to the same subject contained in the rejected treaty, and which referred to a subsisting convention with Honduras for the cession to that republic of the Bay Islands. Taken in connection with this convention, of which your lordship was good enough on the 10th instant to communicate a copy to this department, upon my application, that provision, whilst declaring the Bay Islands to be "a free territory under the sovereignty of the Republic of Honduras," deprived that country of rights without which its sovereignty over them could scarcely be said to exist. It separated them from the remainder of Honduras, and gave them a government of their own, with their own legislative, executive, and judicial officers, elected by themselves. It deprived the government of Honduras of the taxing power in every form, and exempted the people of the Bay Islands from the performance of military duty, except for their own defense, and it prohibited the republic from providing for the protection of these islands by the construction of any fortifications whatsoever, leaving them open to invasion from any quarter. Had Honduras ratified this treaty, she would have ratified the establishment of an "independent" state within her own limits, and a state at all times liable to foreign influence and control. I am not, therefore, surprised to learn from your lordship that "Her Majesty's Government do not expect that this treaty, in its present shape, will be definitely sanctioned by that republic."

But, while this expectation may be justified by the event, it is certain that the new provision, like the former one, contemplates the cession of the Bay Islands to Honduras, only upon certain "conditions," and that these conditions are to be sanctioned by this government. The proposition, therefore, though changed in form, is the same in substance with that which was recently rejected by the Senate of the United States, and a just respect for the Senate would prevent the President from now consenting to its insertion in a new treaty. The action of that body,

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moreover, met his cordial approbation, because it is his firm conviction that the Bay Islands are a part of the territory of Honduras, and justly subject to its government and to no other authority. Entertaining this opinion, it would be impossible for him to sanction any arrangement by which their restoration may be made dependent upon conditions either already prescribed or left to be prescribed hereafter. The case of these islands, as your lordship is aware, stands out in bold relief from all the other subjects embraced in the Clayton-Bulwer treaty. That instrument provided that neither of the parties should "colonize" any portion of Central America; and yet more than a year after its ratification, the colony of the Bay Islands was established by an act of the British Government. The United States have always considered that proceeding a violation of the treaty, even with the British construction of it; and the claim for its justification that the Bay Islands are dependencies of the Belize settlement cannot, it is believed, be maintained with success upon either American or British authority. It is directly at variance with the description given by Sir Charles Grey, the secretary of state for the colonies, in 1836, of the boundaries of the Belize settlement; and, from the discussions between the two governments which took place in London in 1854, it cannot be doubted that it was opposed also to the deliberate opinion of Lord Aberdeen, then at the head of the British cabinet.

Independently, however, of these considerations, there is another view of the subject which interposes insuperable obstacles to the desired action of the United States upon this treaty. The character or the extent of the concessions which England may demand of Honduras is nowhere defined in that instrument. Any grant, however inconsistent with the independence or the rights of that republic, if not inconsistent with the express provisions of the treaty, may be demanded by Great Britain, and, if rejected, what then will be the condition of the parties? Great Britain would retain the possession of these islands, with the implied concurrence of the United States, and this valuable group, overlooking one of the great avenues of communication of the world, and in the freedom and security of which the United States have a far deeper interest than any other nation, might thus eventually become a permanent portion of the British Empire. That the United States should decline to make themselves a party to such an arrangement can surely occasion neither surprise nor disappointment to the people or statesmen of Great Britain.

I am, therefore, directed by the President to announce to your lordship that he cannot accept the *projet* of a treaty which, agreeably to your instructions, you have presented for his consideration. But, while feeling it his duty so to decide, he fully reciprocates the desire of your government to cement the amicable relations of the two countries, and, during his administration, no effort shall be wanting on his part to prevent any interruption of that friendly intercourse which both Great Britain and the United States have so many powerful motives to promote.

I have, &c.,

LEWIS CASS.

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46.—*Lord Napier to Lord Clarendon.*

[Extract.]

No. 19.] WASHINGTON, *June 22, 1857.* (Received July 7.)

It is probable that if the pending discussions regarding Central America be not closed during the present summer, an attempt will be made in the next session of Congress to set aside the Clayton-Bulwer treaty. My impression to this effect is constantly deepened by reflection and by the information which reaches me from several quarters.

There can be no doubt of the views of the President and Cabinet in this matter.

NAPIER.

The EARL OF CLARENDON.

47.—*Lord Napier to Lord Clarendon.*

[Extract.]

WASHINGTON, *October 12, 1857.* (Received October 30.)

MY LORD: I am now assured that the American Cabinet will shortly receive Mr. Yrissari in the quality of minister from Nicaragua, and that a treaty will be negotiated with him for the protection of the interoceanic passage by the River San Juan, similar to that contracted between Great Britain and Honduras for the guarantee of the railway projected across the territory of the latter state.

At the same time the Government of Nicaragua have recognized the existence of the old "American Atlantic and Pacific Ship Canal Company," which appeared to have lapsed during the operations of the "Accessory Transit Company," of filibustering notoriety. The original charter of the former association has been modified under the deliberations of the Nicaraguan minister and Mr. Joseph White, the legal adviser of that body. The company is under the nominal presidency of Mr. Stevens, of New York, and is said to comprise some persons of credit and substantial resources, but Mr. White is the active agent in the enterprise. If not officially recognized, his project is viewed with favor by the American Cabinet, and I think it may very probably be carried into operation.

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NAPIER.

48.—*General Cass to Lord Napier.*

WASHINGTON, *October 20, 1857.*

MY LORD: I have had the honor to receive your lordship's communication of the 9th instant, in reference to the existing relations between Nicaragua and Costa Rica, and have submitted it to the consideration of the President.

These relations have attracted the earnest attention of the President, not only from the importance of the San Juan transit to the commerce of the world, but from the interest which is naturally felt by the United States in the neighboring republics of this continent. The President

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has witnessed, therefore, the restoration of peace to Nicaragua and Costa Rica with the highest gratification; and he sincerely hopes that it may not again be interrupted either by the calamity of civil war or the invasion of their territory from other countries. Their security and welfare would undoubtedly be promoted by a just and friendly settlement between them of their mutual boundaries and jurisdiction; and I need hardly add that such an adjustment would be viewed with satisfaction by the United States. This government, however, has never admitted the pretensions of Costa Rica to an equal control with Nicaragua of the San Juan River, but has regarded the sovereignty of the river, and consequently of the interoceanic transit by that route, as rightfully belonging to the Republic of Nicaragua.

A similar view of the question appears to have been recognized by Great Britain, and, whatever may be the rights of Costa Rica with respect to the free passage of her own products by the river to the ocean, it is better, probably, that what has been thus acquiesced in, and has led moreover to important contracts and responsibilities, should not now be disturbed. But under any circumstances the commercial nations of the world can never permit the interoceanic passages of the isthmus to be rendered useless for all the great purposes which belong to them in consequence of the neglect or incapacity of the states through whose territories they happen to run. The United States, as I have before had occasion to assure your lordship, demand no exclusive privileges in these passages, but will always exert their influence to secure their free and unrestricted benefits, both in peace and war, to the commerce of the world. The rumored invasion of Central America, which your lordship apprehends may delay the re-establishment of the transit service through Nicaragua, has not escaped the attention of the President, and his views on the subject are clearly indicated in the circular from this Department of the 18th ultimo, which has been printed in the public journals, and has not escaped your lordship's notice.

No nation on earth, it is believed, appreciates its national rights and duties more highly than the United States, and no one is more ready to concede to other nations, whether strong or weak, that measure of justice which it claims for itself. Any such expedition as that which has been mentioned is forbidden, under severe penalties, by the laws of this country, and these laws the President will take care, on all proper occasions, to enforce.

I have thus endeavored to meet the frank suggestions of your lordship by restating, with corresponding frankness, the general policy of the United States with respect to the governments and the interoceanic transits of Central America; but since your lordship has referred to the Clayton-Bulwer treaty of 1850 as contemplating a "harmonious course of action and counsel between the contracting parties in the settlement of the Central American interests," you will pardon me for reminding your lordship that the differences which this treaty was intended to adjust between the United States and Great Britain still remain unsettled, while the treaty itself has became the subject of new and embarrassing complications.

Until these disagreements can be removed, and the states of Central America can be left to that independent control of their own affairs, with which the continued claims of Great Britain in that quarter seem to this government quite inconsistent, it is easy to see that the harmony of action and counsel between this government and that of Her Britannic Majesty, to which your lordship refers, must be always attended with difficulty, if not found impossible.

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It was hoped that these differences would be removed by the approval, on the part of Great Britain, of the amended treaty of October 17, 1856, which had been sanctioned by the President in a spirit of amity towards that kingdom, although its provisions were not wholly in accordance with his views. But the British Government found it necessary to withhold their approval, and the treaty was returned from London unratified.

It was impossible for this government to consent to the treaty in its original form, for reasons which your lordship well understands, and no further discussion has been had on the subject between the two governments.

The President still entertains an earnest hope that all subjects of disagreement which now exist between the United States and Great Britain may be harmoniously adjusted at an early day, but he can not be insensible to the long delay which has attended their negotiations on the subject of Central America, or to the serious difficulties which the continuance of this delay is calculated to produce.

I avail, &c.,

LEWIS CASS

49.—*Lord Napier to Lord Clarendon.*

[Extract.]

No. 26.] WASHINGTON, *October 22, 1857.* (Received November 9.)

On receiving an intimation from your lordship that Her Majesty's Government had determined to send out a special minister to Central America, with a view of adjusting the questions under discussion in that quarter, I sought an interview with the President for the purpose of communicating this intelligence to his Excellency.

The President received me on the afternoon of the 19th instant, and I was enabled to report to your lordship by the mail of the same day, in a private form, the substance of a conversation which I have now the honor to submit to your lordship with more accuracy and extension.

I stated to the President that, since the failure of the late overtures consequent on the non-ratification of the treaty of 1856, Her Majesty's Government had considered the several alternatives of action which were open to their selection, and on a review of the whole case, had resolved to dispatch a representative of authority and experience to Central America, charged to make a definite settlement of all the matters with regard to which the United States and England were still at variance.

This conclusion had been embraced for some time past, and the delay which had occurred was referable partly to the difficulty of selecting a competent person for a duty which involved much personal inconvenience, and demanded peculiar qualifications, and partly to the nature of the intelligence from India, which had of late absorbed the attention of the English cabinet.

Her Majesty's Government had, however, now appointed Sir William Gore Ouseley for the service alluded to, and felt the greater satisfaction in doing so because he was intimately known to the President and enjoyed his good opinion.

I could not state exactly the character of the instructions with which

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Sir William Ouseley would be charged, but I might infer from all that had reached me that they would virtually be to the following effect:

The efforts of the new plenipotentiary would be directed to those objects which had been dealt with in the treaty of 1856, now laid aside, viz, the cession of the Bay Islands to Honduras, the substitution of the sovereignty of Nicaragua for the protectorate of England in Mosquito, and the regulation of the frontiers of Belize.

In short, I believed it was the intention of Her Majesty's Government to carry the Clayton-Bulwer treaty into execution according to the general tenor of the interpretation put upon it by the United States, but to do so by separate negotiation with the Central American Republics, in lieu of a direct engagement with the Federal Government.

The President commenced his observations by referring to the Clayton-Bulwer treaty as a fruitful source of misunderstanding between the contracting parties. Without that treaty the United States and Great Britain might long since have co-operated for the welfare of Central America. That treaty had never been acceptable to the people of the United States, and would not have obtained a vote in the Senate, had the least suspicion existed of the sense in which it was to be construed by Great Britain; yet if it were now the intention of Her Majesty's Government to execute it according to the American interpretation, that was as much as he could insist upon.

In any arrangement entered into with this purpose, he must, however, remark that the Government of the United States could not recognize as satisfactory the cession of the Bay Islands to Honduras, with stipulations similar to those contained in the treaty lately negotiated between England and that republic, which left the Bay Islands as much under the protection of Great Britain as Mosquito. He did not know what had become of that treaty.

I replied that I felt convinced it had been the intention of Her Majesty's Government to deliver the islands to Honduras in full sovereignty, and that the franchises awarded to them by the treaty were designed for the freedom of trade, the protection of the vested interests of British subjects, and the welfare of the inhabitants.

I added that his excellency was well aware of the convictions conscientiously held in England respecting slavery, and of the respect which Her Majesty's Government owed to public feeling on that subject. I might plainly affirm that a principal motive in framing securities for the after government of the Bay Islands had been the apprehension that, when relinquished by the English authorities, those islands would be settled by planters from the United States, who would bring their negroes with them, and thus establish slavery on soil which had, justly or unjustly, been declared to be a colonial dependency of Great Britain.

Her Majesty's Government, moreover, regarded the Bay Islands as forming, in a manner, one of the termini of the Honduras transit route, and therefore desired to see them endowed with the privileges of a free port, the Island of Tigre, in the Gulf of Fonsega, at the other extremity, having long possessed those immunities.

The President contended that the stipulations were uncalled for and that Her Majesty's Government might have surrendered the islands freely, and subsequently enforced on the Government of Honduras a due respect to the claims of British settlers.

In reply to his excellency, I allowed that the articles establishing the administrative independence of the islands might have been larger than was necessary. I had observed the same impression in the corre-

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spondence of Mr. Wyke, Her Majesty's chargé d'affaires at Guatemala, who seemed to admit that a greater participation in the internal government might be granted to the authorities of Honduras; that I made no doubt Her Majesty's Government would entertain any reasonable suggestions which might be afforded to them in that sense. As far as I knew the discussion was not closed, and Sir William Ouseley would, probably, have power to enter upon it in a liberal spirit.

I then went on to animadvert upon the danger of some movement in the approaching Congress which would interfere with the contemporary negotiation of Sir William Ouseley, remarking that should the President in his message allude to the position of the two countries in reference to Central America, and if, in consequence of his excellency's reflections a resolution should be proposed for the abrogation of the Clayton-Bulwer treaty, such a step would not only frustrate the purposes of Sir William Ouseley's mission, but would have a calamitous influence on the future relations of England and America. It would, therefore, be highly gratifying to me to be enabled to assure your lordship that, pending the negotiation intrusted to Sir William Ouseley, no proposal to annul the treaty would be sanctioned or encouraged by his excellency or by the members of his government.

The President stated, in reply, that it was certainly his intention to give an account in his message of all that had passed between the two governments respecting the Dallas-Clarendon treaty. He appeared to intimate that the effect of such a narrative would be to place the conduct of Great Britain in an unfavorable light, and he added that the passage in which he commented upon these transactions was already prepared; but his excellency went on to affirm, with emphasis, that if the resolutions of Her Majesty's Government were such as I had related, if they really meant to execute the Clayton-Bulwer treaty according to the American interpretation, and would, before the meeting of Congress, make some communication to him in that sense, such as he could use, he would cancel what he had written and insert another passage referring to the mission of Sir William Ouseley, and that "nothing would give him greater pleasure than to add the expression of his sincere and ardent wish for the maintenance of friendly relations between the two countries."

His excellency also distinctly declared that, under the circumstances here described, no attempt against the Clayton-Bulwer treaty in Congress would have any countenance from him whatever. To him it was indifferent whether the concessions contemplated by Her Majesty's Government were consigned to a direct engagement between England and the United States, or to treaties between the former and the Central American republics. The latter method might, in some respects, be even more agreeable to him, and he thought it would be more convenient to Her Majesty's Government, who might, with greater facility, accede to the claims of the weaker party.

I thanked the President for his assurances, and expressed my hope that your lordship would be enabled to make a full communication of Sir William Ouseley's instructions to the American Cabinet, and even to direct that minister to visit Washington, on his way to Central America, if his excellency thought such a step would be advisable. The President replied that a written communication would be sufficient, even if it reached him a few days before the meeting of Congress.

In the course of this interview the President touched incidentally upon the Honduras Railway, which he trusted might prove a successful enterprise, although the impressions which reached him were un-

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favorable to its practicability, or, at least, to its profitable execution. In this sentiment I concurred with the President, and avowed my apprehension that the undertaking would be the grave of a vast amount of British capital, which had been already so extensively wasted on the American continents.

Allusion having been made to the relations of Costa Rica and Nicaragua, the President asserted that the United States aimed at no exclusive privileges and at no possession in that region; their interests and those of Great Britain were identical. I answered that such had always been my persuasion and my language, and that the parties who had obtained concessions from Costa Rica for the transit or the navigation of the River San Juan, acted, in my belief, without any sanction or authority from Her Majesty's Government. The jurisdiction of the transit was vested in Nicaragua; but Her Majesty's Government, I thought, would desire to secure the beneficial use of the river to Costa Rica for the purposes of import and export trade—a claim which seemed equitable and consistent with the views of the United States with reference to the navigation of the Amazon.

I have the pleasure of reporting to your lordship that the President took occasion to declare his satisfaction in the sympathy which had been displayed throughout the United States towards England since the outbreak of the Indian mutiny, and his own confidence in the success of Her Majesty's arms, which was to be desired in the interest of the natives of Hindostan.

At the conclusion of the interview, as I rose to take my leave, the President resumed the subject and said:

> I shall be satisfied on condition that the British Government sends a minister to Central America, instructed to settle all the questions which have been controverted between the two governments according to the American construction of the treaty, and upon receiving an official assurance to this effect I shall change the character of my message.

In affirming the present policy of Her Majesty's Government to be "the execution of the Clayton-Bulwer treaty according to the general tenor of the interpretation placed upon it by the United States," I trust that I have not misconstrued the views of Her Majesty's Government in the mission of Sir William Ouseley.

I am careful in my language on this subject to mark that I spoke on a broad impression of your lordship's intentions, and not on a particular official knowledge of the decision of Her Majesty's Government.

I need not add that the engagements of the President do not depend in any degree on what I have hazarded on my own responsibility, but are altogether contingent on the the nature of the communication which his excellency may receive before the 4th of next December, when Congress will assemble.

NAPIER.

The EARL OF CLARENDON.

50.—*Cass-Yrisarri treaty, November 16, 1857.*

The Republic of Nicaragua and the United States of America, being desirous to maintain with each other the most friendly relations, to promote the commercial intercourse of their respective citizens, and to make some mutual arrangement with respect to a communication between the Atlantic and Pacific Oceans by the river San Juan de Nicaragua and either or both the lakes of Nicaragua and Managua, or by any other

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route through the territories of said Republic of Nicaragua, have deemed it expedient to conclude a treaty of friendship, commerce and navigation, and for this purpose have named the following plenipotentiaries, that is to say:

The Republic of Nicaragua, Antonio José de Yrisarri, her envoy extraordinary and minister plenipotentiary in the United States of America;

And the President of the United States of America, Lewis Cass, Secretary of State of the United States; who, after having communicated to each other their full powers, found to be in due and proper form, have agreed upon and concluded the following articles:

ARTICLE I.

There shall be perpetual amity between the United States and their citizens, on the one part, and the Government of the Republic of Nicaragua and its citizens on the other.

ARTICLE II.

There shall be, between all the territories of the United States and the territories of the Republic of Nicaragua, a reciprocal freedom of commerce. The subjects and citizens of the two countries, respectively, shall have full liberty, freely and securely, to come, with their ships and cargoes, to all places, ports, and rivers, in the territories aforesaid, to which other foreigners are, or may be, permitted to come, to enter into the same, and to remain and reside in any part thereof, respectively; also, to hire and occupy houses and warehouses for the purposes of their commerce; and generally the merchants and traders of each nation, respectively, shall enjoy the most complete protection and security for their commerce, subject always to the laws and statutes of the two countries, respectively.

In like manner the respective ships of war and post-office packets of the two countries shall have liberty, freely and securely, to come to all harbors, rivers, and places to which other foreign ships of war and packets are, or may be, permitted to come, to enter the same, to anchor, and to remain there and refit, subject always to the laws and statutes of the two countries, respectively.

By the right of entering places, ports, and rivers, mentioned in this article, the privilege of carrying on the coasting trade is not understood, in which trade national vessels only of the country where the trade is carried on are permitted to engage.

ARTICLE III.

It being the intention of the two high contracting parties to bind themselves, by the preceding articles, to treat each other on the footing of the most favored nation, it is hereby agreed between them that any favor, privilege, or immunity whatever, in matters of commerce and navigation, which either contracting party has actually granted, or may grant hereafter, to the subjects or citizens of any other State, shall be extended to the subjects of the other contracting party gratuitously, if the concession in favor of that other nation shall have been gratuitous, or in return for a compensation, as nearly as possible, of proportionate value and effect, to be adjusted by mutual agreement if the concession shall have been conditional.

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ARTICLE IV.

No higher nor other duties shall be imposed on the importation into the territories of the United States of any article being the growth, produce, or manufacture of the Republic of Nicaragua, and no higher or other duties shall be imposed on the importation into the territories of the Republic of Nicaragua of any articles being the growth, produce, or manufacture of the territories of the United States than are, or shall be, payable upon the like articles being the growth, produce, or manufacture of any other foreign country; nor shall any other or higher duties or charges be imposed in the territories of either of the high contracting parties on the exportation of any articles to the territories of the other than such as are, or may be, payable on the exportation of the like articles to any other foreign country; nor shall any prohibition be imposed upon the exportation or importation of any articles the growth, produce, or manufacture of the territories of the United States or the Republic of Nicaragua, to or from the said territories of the United States, or to or from the Republic of Nicaragua, which shall not equally extend to all other nations.

ARTICLE V.

No higher nor other duties or payments, on account of tonnage, of light or harbor dues, or pilotage, of salvage in case of either damage or shipwreck, or on account of any local charges, shall be imposed in any of the ports of Nicaragua on vessels of the United States than those payable by Nicaraguan vessels; nor in any of the ports of the United States on Nicaraguan vessels than shall be payable in the same ports on vessels of the United States.

ARTICLE VI.

The same duties shall be paid on the importation into the territories of the Republic of Nicaragua of any article being the growth, produce and manufacture of the territories of the United States, whether such importations shall be made in Nicaraguan vessels or in vessels of the United States; and the same duties shall be paid on the importation into the territories of the United States of any article being the growth, produce, or manufacture of the Republic of Nicaragua, whether such importation shall be made in United States or Nicaraguan vessels.

The same dues shall be paid and the bounties and drawbacks allowed on the exportation to the Republic of Nicaragua of any articles being the growth, produce, or manufacture of the territories of the United States, whether such exportations shall be made in Nicaraguan or United States vessels; and the same duties shall be paid and the same bounties and drawbacks allowed on the exportation of any article being the growth, produce, or manufacture of the Republic of Nicaragua to the territories of the United States, whether such exportation shall be made in the vessels of the United States or of Nicaragua.

ARTICLE VII.

All merchants, commanders of ships, and others, citizens of the United States, shall have full liberty in all the territories of the Republic of Nicaragua to manage their own affairs themselves, as permitted by the

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laws, or to commit them to the management of whomsoever they please, as broker, factor agent, or interpreter; nor shall they be obliged to employ any other persons in those capacities than those employed by Nicaraguans, nor to pay them any other salary or remuneration than such as is paid in like cases by Nicaraguan citizens; and absolute freedom shall be allowed in all cases to the buyer and seller to bargain and fix the price of any goods, wares, or merchandise imported into, or exported from, the Republic of Nicaragua, as they shall see good, observing the laws and established customs of the country.

The same privileges shall be enjoyed in the territories of the United States by the citizens of the Republic of Nicaragua under the same conditions.

The citizens of the high contracting parties shall reciprocally receive and enjoy full and perfect protection for their persons and property, and shall have free and open access to the courts of justice in said countries, respectively, for the prosecution and defense of their just rights; and they shall be at liberty to employ, in all cases, the advocates, attorneys, or agents, of whatever description, whom they may think proper; and they shall enjoy, in this respect, the same rights and privileges therein as native citizens.

ARTICLE VIII.

In whatever relates to the police of the ports, the lading and unlading of ships, the safety of the merchandise, goods, and effects; the succession to personal estates, by will or otherwise; and the disposal of personal property of every sort and denomination, by sale, donation, exchange, testament, or any other manner whatsoever, as also the administration of justice, the citizens of the two high contracting parties shall reciprocally enjoy the same privileges, liberties, and rights as native citizens; and they shall not be charged, in any of these respects, with any higher imposts or duties than those which are, or may be, paid by native citizens, submitting, of course, to the local laws and regulations of each country, respectively.

The foregoing provisions shall be applicable to real estate situated within the States of the American Union or within the Republic of Nicaragua, in which foreigners shall be entitled to hold or inherit real estate.

But in case real estate situated within the territories of one of the contracting parties should fall to a citizen of the other party, who, on account of his being an alien, could not be permitted to hold such property in the state in which it may be situated, there shall be accorded to the said heir, or other successor, such term as the laws of the state will permit to sell such property; he shall be at liberty at all times to withdraw and export the proceeds thereof without difficulty, and without paying to the government any other charges than those which, in a similar case, would be paid by an inhabitant of the country in which the real estate may be situated.

If any citizen of either of the two high contracting parties shall die without a will or testament in any of the territories of the other, the minister or consul or other diplomatic agent of the nation to which the deceased belonged (or the representative of such minister or consul or other diplomatic agent, in case of absence), shall have the right to nominate curators to take charge of the property of the deceased, so far as the laws of the country will permit, for the benefit of the lawful heirs and creditors of the deceased, giving proper notice of such nomination to the authorities of the country.

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ARTICLE IX.

1. The citizens of the United states residing in Nicaragua, or the citizens of Nicaragua residing in the United States, may intermarry with the natives of the country, hold and possess, by purchase, marriage, or descent, any estate, real or personal, without thereby changing their national character, subject to the laws which now exist or may be enacted in this respect.

2. The citizens of the United States residents in the Republic of Nicaragua, and the citizens of Nicaragua residents in the United States, shall be exempted from all forced (or compulsory) military service whatsoever, by land or sea; from all contributions of war, military exactions, forced loans in time of war; but they shall be obliged in the same manner as the citizens of each nation to pay lawful taxes, municipal and other modes of imposts and ordinary charges, loans, and contributions in time of peace (as the citizens of the country are liable), in just proportion to the property owned.

3. Nor shall the property of either, of any kind, be taken for any public object, without full and just compensation to be paid in advance; and,

4. The citizens of each of the two high contracting parties shall have the unlimited right to go to any part of the territories of the other, and in all cases enjoy the same security as the natives of the country where they reside, with the condition that they duly observe the laws and ordinances.

ARTICLE X.

It shall be free for each of the two high contracting parties to appoint consuls for the protection of trade, to reside in any of the territories of the other party.

But before any consul shall act as such, he shall, in the usual form, be approved and admitted by the government to which he is sent, and either of the high contracting parties may except from the residence of consuls such particular places as they judge fit to be excepted.

The diplomatic agents of Nicaragua and consuls shall enjoy in the territories of the United States whatever privileges, exemptions, and immunities whatever as are, or shall be, allowed to the agents of the same rank belonging to the most favored nations; and, in like manner, the diplomatic agents and consuls of the United States in Nicaragua, shall enjoy, according to the strictest reciprocity, whatever privileges, exemptions, and immunities that are, or may be, granted in the Republic of Nicaragua to the diplomatic agents and consuls of the most favored nations.

ARTICLE XI.

For the better security of commerce between the citizens of the United States and the citizens of Nicaragua it is agreed that if at any time any interruption of friendly intercourse or any rupture should unfortunately take place between the two high contracting parties, the citizens of either, who may be within the territories of the other, shall, if residing on the coast, be allowed six months, and if in the interior, a whole year, to wind up their accounts and dispose of their property; and a safe conduct shall be given to them to embark at any port they themselves may select. Even in case of a rupture all such citizens of either of the high contracting parties, who are established in any of the territories of the other in trade or other employment, shall have the privilege of remain-

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ing and of continuing such trade or employment without any manner of interruption, in the full enjoyment of liberty and property, so long as they behave peacefully and commit no offense against the laws, and their goods and effects, of whatever description they may be, whether in their own custody or intrusted to individuals, or to the state, shall not be liable to seizure or sequestration nor to any other charges or demands than those which may be made upon the like effects or property belonging to the native citizens of the country in which such citizens may reside. In the same case, debts between individuals, property out in public funds, and shares of companies, shall never be confiscated nor detained.

ARTICLE XII.

The citizens of the United States and the citizens of the Republic of Nicaragua, respectively, residing in any of the territories of the other party shall enjoy in their houses, persons, and property the protection of the government, and shall continue in possession of the guarantees which they now enjoy. They shall not be disturbed, molested, or annoyed in any manner on account of their religious belief, nor in the proper exercise of their religion, agreeably to the system of tolerance established in the territories of the high contracting parties, provided they respect the religion of the nation in which they reside, as well as the constitution, laws, and customs of the country.

Liberty shall be also granted to bury the citizens of either of the two high contracting parties who may die in the territories aforesaid, in burial places of their own, which, in the same manner, may be freely established and maintained; nor shall the funerals or sephulchres of the dead be disturbed in any way or upon any account.

ARTICLE XIII.

Whenever the citizens of either of the contracting parties shall be forced to seek refuge or asylum in the rivers, bays, ports, or dominions of the other, with their vessels, whether merchant or war, public or private, through stress of weather, pursuit of pirates or enemies, or want of provisions or water, they shall be received and treated with humanity and given all favor and protection for repairing their vessels, procuring provisions and placing themselves in all respects in a condition to continue their voyage without obstacle or hinderance of any kind.

ARTICLE XIV.

The Republic of Nicaragua hereby grants to the United States, and to their citizens and property, the right of transit between the Atlantic and Pacific Oceans through the territories of that republic on any route of communication, natural or artificial, whether by land or water, which may now or hereafter exist or be constructed under the authority of Nicaragua, to be used and enjoyed, in the same manner and upon equal terms by both republics and their respective citizens, the Republic of Nicaragua, however, reserving its right of sovereignty over the same.

ARTICLE XV.

The United States hereby agree to extend their protection to all such routes of communication as aforesaid, and to guarantee the neutrality

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of the same. They also agree to employ their influence with other nations to induce them to guarantee such neutrality and protection.

And the Republic of Nicaragua on its part undertakes to establish two free ports, one at each of the extremities of the communications aforesaid on the Atlantic and Pacific Oceans. At these ports no tonnage or other duties shall be imposed or levied by the Government of Nicaragua on the vessels of the United States, or on any effects or merchandise belonging to citizens or subjects of the United States, or upon the vessels or effects of any other country intended *bona fide* for transit across the said routes of communication and not for consumption, within the Republic of Nicaragua.

The United States shall also be at liberty to carry troops and munitions of war in their own vessels or otherwise to either of the said free ports, and shall be entitled to their conveyance between them without obstruction by the authorities of Nicaragua, and without any charges or tolls whatever for their transportation on either of said routes of communication. And no higher or other charges or tolls shall be imposed on the conveyance or transit of persons or property of citizens or subjects of the United States or of any other country across the said routes of communication than are or may be imposed on the persons and property of citizens of Nicaragua. And the Republic of Nicaragua recognizes the right of the Postmaster-General of the United States to enter into contracts with any individuals or companies to transport the mails of the United States along the said routes of communication, or along any other routes across the isthmus, in its discretion, in closed bags, the contents of which may not be intended for distribution within the said republic, free from the imposition of all taxes or duties by the Government of Nicaragua; but this liberty is not to be construed so as to permit such individuals or companies, by virtue of this right to transport the mails, to carry also passengers or freight.

Article XVI.

The Republic of Nicaragua agrees that, should it become necessary at any time to employ military force for the security and protection of persons and property passing over any of the routes aforesaid, it will employ the requisite force for that purpose; but, upon failure to do this for any cause whatever, the Government of the United States may, after notice to the Government of Nicaragua, or to the minister thereof in the United States, employ such force, for this and for no other purpose; and when the necessity ceases, such force shall be immediately withdrawn.

Article XVII.

It is understood, however, that the United States, in according protection to such routes of communication, and guaranteeing their neutrality and security, always intend that the protection and guarantee are granted conditionally, and may be withdrawn if the United States should deem that the persons or company undertaking or managing the same adopt or establish such regulations concerning the traffic thereupon as are contrary to the spirit and intention of this treaty, either by making unfair discriminations in favor of the commerce of any nation or nations over the commerce of any other nation or nations, or by imposing oppressive exactions or unreasonable tolls upon mails, passengers, vessels, goods, wares, merchandise, or other articles.

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The aforesaid protection and guarantee shall not, however, be withdrawn by the United States without first giving six months' notice to the Republic of Nicaragua.

ARTICLE XVIII.

And it is further understood and agreed that in any grants or contracts which may hereafter be made or entered into by the Government of Nicaragua having reference to the interoceanic routes above referred to, or either of them, the rights and privileges granted by this convention to the Government and citizens of the United States shall be fully protected and reserved. And if any such grants or contracts now exist of a valid character, it is further understood that the guarantee and protection of the United States stipulated in Article XV of this treaty shall be held inoperative and void until the holders of such grants or contracts shall recognize the concessions made in this treaty to the Government and citizens of the United States with respect to such interoceanic routes, or either of them, and shall agree to observe and be governed by those concessions as fully as if they had been embraced in their original grants or contracts; after which recognition and agreement, said guarantee and protection shall be in full force; provided that nothing herein contained shall be construed either to affirm or deny the validity of any of the said contracts.

ARTICLE XIX

After ten years from the completion of a railroad or any other route of communication through the territory of Nicaragua, from the Atlantic to the Pacific Ocean, no company which may have constructed or be in possession of the same shall ever divide, directly or indirectly, by the issue of new stock, the payment of dividends, or otherwise, more than fifteen per cent. per annum, or at that rate, to its stockholders from tolls collected thereupon; but whenever the tolls shall be found to yield a larger profit than this, they shall be reduced to the standard of fifteen per cent. per annum.

ARTICLE XX.

It is understood that nothing contained in this treaty shall be construed to affect the claim of the government and citizens of the Republic of Costa Rica to a free passage by the San Juan River for their persons and property to and from the ocean.

ARTICLE XXI.

The two high contracting parties, desiring to make this treaty as durable as possible, agree that this treaty shall remain in full force for the term of twenty years from the day of the exchange of the ratifications; and either party shall have the right to notify the other of its intention to terminate, alter, or reform this treaty, at least twelve months before the expiration of the twenty years; if no such notice be given, then this treaty shall continue binding beyond the said time, and until twelve months shall have elapsed from the day on which one of the parties shall notify the other of its intention to alter, reform, or abrogate this treaty.

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ARTICLE XXII.

The present treaty shall be ratified, and the ratifications exchanged, at Washington City, within the space of nine months, or sooner, if possible.

In witness whereof the respective plenipotentiaries have signed the same, and affixed thereto their respective seals.

Done at the city of Washington, this sixteenth of November, in the year of our Lord one thousand eight hundred fifty-seven.

LEWIS CASS.
A. J. DE YRISARRI.

51.—*Lord Napier to General Cass.*

[Extract.]

WASHINGTON, *November 30, 1857.*

SIR: * * * * *

2. In framing stipulations for the compensation, the government, and the preservation of the Mosquito Indians under the sovereignty of Nicaragua, Sir William Ouseley will be guided by the provisions of the treaty of 1856, which, although it did not acquire the validity of an international engagement, may on this point be held to express the policy and opinions of the contracting parties. The limits of the territorial reserve may be subject to modification, but the boundaries proposed to Nicaragua and Honduras will certainly not be less favorable than those indicated by the treaty alluded to; they will in no degree trespass on the territory applicable to transit purposes, and in the settlement of details Her Majesty's envoy will grant an indulgent consideration to the wishes and necessities of the Central American governments when they are compatible with the safety and the welfare of those native tribes which have previously enjoyed the protection of the British crown.

3. The regulation of the frontier of British Honduras will be effected by negotiation with the Government of Guatemala. Her Majesty's Government trusts to obtain from this republic a recognition of limits, which, if we may judge from previous communication on this subject, may be accepted in a spirit of conciliation if not with absolute approval by the President.

Such is, in outline, the basis of the negotiation committed to Sir William Ouseley, as far as regards the construction and execution of the provisions of the Clayton-Bulwer treaty. The interpretation of that instrument thus practically sanctioned by Her Majesty's Government may not strictly coincide with that which is adopted, no doubt in perfect sincerity, by the United States; but the present resolution of Her Majesty's Government involves no slight relaxations of the sense in which, in equal good faith, the engagements of 1850 were contracted by Great Britain. It is hoped that the concessions of Her Majesty's Government will be met in a similar temper by the Government of the United States, that the mission of Sir William Ouseley will be regarded with benevolence, and that, if successfully accomplished, its results will be embraced as an honorable compromise of contending opinions, and as a definitive settlement of those disputed points which have so long attracted the anxious attention of our respective governments.

* * * * * * *

NAPIER.

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52.—President Buchanan's message to Congress, December 8, 1857.

[Extract.]

The diplomatic difficulties which existed between the Government of the United States and that of Great Britain at the adjournment of the last Congress, have been happily terminated by the appointment of a British minister to this country, who has been cordially received.

Whilst it is greatly to the interest, as I am convinced it is the sincere desire, of the governments and people of the two countries to be on terms of intimate friendship with each other, it has been our misfortune almost always to have had some irritating, if not dangerous, outstanding question with Great Britain.

Since the origin of the government we have been employed in negotiating treaties with that power, and afterwards in discussing their true intent and meaning. In this respect the convention of April 19, 1850, commonly called the Clayton and Bulwer treaty, has been the most unfortunate of all; because the two governments place directly opposite and contradictory constructions upon its first and most important article. Whilst in the United States, we believed that this treaty would place both powers upon an exact equality by the stipulation that neither will ever "occupy, or fortify, or colonize, or assume or exercise any dominion" over any part of Central America, it is contended by the British Government that the true construction of this language has left them in the rightful possession of all that portion of Central America which was in their occupancy at the date of the treaty; in fact, that the treaty is a virtual recognition on the part of the United States of the right to Great Britain, either as owner or protector, to the whole extensive coast of Central America, sweeping round from the Rio Hondo to the port and harbor of San Juan de Nicaragua, together with the adjacent Bay Islands, except the comparatively small portion of this between the Sarstoon and Cape Honduras. According to their construction, the treaty does no more than simply prohibit them from extending their possessions in Central America beyond the present limits. It is not too much to assert, that if in the United States the treaty had been considered susceptible of such a construction, it never would have been negotiated under the authority of the President, nor would it have received the approbation of the Senate. The universal conviction in the United States was, that when our Government consented to violate its traditional and time-honored policy, and to stipulate with a foreign government never to occupy or acquire territory in the Central American portion of our continent, the consideration for this sacrifice was that Great Britain should, in this respect, at least, be placed in the same position with ourselves.

Whilst we have no right to doubt the sincerity of the British government in their construction of the treaty, it is at the same time my deliberate conviction that this construction is in opposition both to its letter and its spirit.

Under the late administration negotiations were instituted between the two governments for the purpose, if possible, of removing these difficulties; and a treaty having this laudable object in view was signed at London on the 17th October, 1856, and was submitted by the President to the Senate on the following 10th of December.

Whether this treaty, either in its original or amended form, would have accomplished the object intended without giving birth to new and embarrassing complications between the two governments, may perhaps

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be well questioned. Certain it is, however, it was rendered much less objectionable by the different amendments made to it by the Senate.

The treaty, as amended, was ratified by me on the 12th March, 1857, and was transmitted to London for ratification by the British Government. That government expressed its willingness to concur in all the amendments made by the Senate, with the single exception of the clause relating to Ruatan and the other islands in the Bay of Honduras. The article in the original treaty, as submitted to the Senate, after reciting that these islands and their inhabitants—

having been by a convention bearing date the 27th day of August, 1856, between Her Britannic Majesty and the Republic of Honduras, constituted and declared a free territory under the sovereignty of the said Republic of Honduras—

stipulated that—

the two contracting parties do hereby mutually engage to recognize and respect in all future time the independence and rights of the said free territory as a part of the Republic of Honduras.

Upon an examination of this convention between Great Britain and Honduras of the 27th August, 1856, it was found that, whilst declaring the Bay Islands to be "a free territory under the sovereignty of the Republic of Honduras," it deprived that republic of rights without which its sovereignty over them could scarcely be said to exist. It divided them from the remainder of Honduras, and gave to their inhabitants a separate government of their own, with legislative, executive, and judicial officers, elected by themselves. It deprived the government of Honduras of the taxing power in every form, and exempted the people of the islands from the performance of military duty, except for their own exclusive defense. It also prohibited that republic from erecting fortifications upon them for their protection, thus leaving them open to invasion from any quarter; and, finally, it provided "that slavery shall not at any time hereafter be permitted to exist therein."

Had Honduras ratified this convention, she would have ratified the establishment of a state substantially independent within her own limits, and a state at all times subject to British influence and control. Moreover, had the United States ratified the treaty with Great Britian in its original form, we should have been bound "to recognize and respect in all future time" these stipulations to the prejudice of Honduras. Being in direct opposition to the spirit and meaning of the Clayton and Bulwer treaty, as understood in the United States, the Senate rejected the entire clause, and substituted in its stead a simple recognition of the sovereign right of Honduras to these islands, in the following language:

The two contracting parties do hereby mutually engage to recognize and respect the islands of Ruatan. Bonaco, Utila, Barbaretta, Helena, and Morat, situate in the Bay of Honduras, and off the coast of the Republic of Honduras, as under the sovereignty and as part of the said Republic of Honduras.

Great Britain rejected this amendment, assigning as the only reason that the ratifications of the convention of the 27th August, 1856, between her and Honduras, had not been "exchanged, owing to the hesitation of that government." Had this been done, it is stated that "Her Majesty's Government would have had little difficulty in agreeing to the modification proposed by the Senate, which then would have had, in effect, the same signification as the original wording." Whether this would have been the effect; whether the mere circumstance of the exchange of the ratifications of the British convention with Honduras prior, in point of time, to the ratification of our treaty with Great Britain

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would "in effect" have had "the same signification as the original wording," and thus have nullified the amendment of the Senate, may well be doubted. It is, perhaps, fortunate that the question has never arisen.

The British Government, immediately after rejecting the treaty as amended, proposed to enter into a new treaty with the United States, similar in all respects to the treaty which they had just refused to ratify, if the United States would consent to add to the Senate's clear and unqualified recognition of the sovereignty of Honduras over the Bay Islands, the following conditional stipulation:

> Whenever and so soon as the Republic of Honduras shall have concluded and ratified a treaty with Great Britain, by which Great Britain shall have ceded, and the Republic of Honduras shall have accepted the said islands, subject to the provisions and conditions contained in such treaty.

This proposition was, of course, rejected. After the Senate had refused to recognize the British convention with Honduras on the 27th August, 1856, with full knowledge of its contents, it was impossible for me, necessarily ignorant of "the provisions and conditions" which might be contained in a future convention between the same parties, to sanction them in advance.

The fact is, that when two nations like Great Britain and the United States, mutually desirous, as they are, and I trust ever may be, of maintaining the most friendly relations with each other, have unfortunately concluded a treaty which they understand in senses directly opposite, the wisest course is to abrogate such a treaty by mutual consent, and to commence anew. Had this been done promptly, all difficulties in Central America would most probably ere this have been adjusted to the satisfaction of both parties. The time spent in discussing the meaning of the Clayton and Bulwer treaty would have been devoted to this praiseworthy purpose, and the task would have been more easily accomplished because the interest of the two countries in Central America is identical, being confined to securing safe transits over all the routes across the Isthmus.

Whilst entertaining these sentiments, I shall nevertheless not refuse to contribute to any reasonable adjustment of the Central American questions which is not practically inconsistent with the American interpretation of the treaty. Overtures for this purpose have been recently made by the British Government in a friendly spirit, which I cordially reciprocate; but whether this renewed effort will result in success I am not yet prepared to express an opinion. A brief period will determine.

53.—*Lord Napier to General Cass.*

WASHINGTON, *February 15, 1858.*

SIR: On the 30th of November last I had the honor to convey to you, under the instructions of Her Majesty's Government, a proposal to submit the controverted points in the treaty of 1850, respecting Central American affairs, to the free arbitration of any European power which the Government of the United States should prefer to select for that office. In a separate note, under the same date, I imparted to the Government of the United States an outline of the instructions under which Sir William Gore Ouseley has been charged to proceed on a special mission to the Central American republics, with a view to the settle-

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ment, by direct negotiation with those states, of the questions which the correspondence of last year in London had failed to adjust. Something in the nature of an alternative was thus offered to the American cabinet. Should the expedient of arbitration be adopted, a great portion of Sir William Ouseley's duty would be transferred to other agencies. Should arbitration be declined it was hoped that the efforts of Her Majesty's envoy would result in a settlement agreeable to the United States, inasmuch as in essential points it would carry the treaty of 1850 into operation in a manner practically conformable to the American interpretation of that instruction.

The note which I had the honor of addressing to you, in reference to the mission of Sir W. Ouseley, has received the official sanction of the Earl of Clarendon, and may therefore be regarded as an authoritative exposition of the intentions of Her Majesty's Government. In that communication, however, I indicated that two obstacles had arisen which might possibly modify the resolutions of Her Majesty's Government: first, the cotemporary negotiation of a convention for the protection of the transit route between the Government of the United States and that of Nicaragua; and secondly, the invasion of the Nicaraguan territory by a band of adventurers, who were engaged in an attempt to subvert the lawful government recognized by Great Britain. The impediments to which I alluded do not now exist.

In the treaty contemplated between the United States and Nicaragua, Her Majesty's Government do not see any obstacle in the realization of their designs committed to the management of Sir William Ouseley, while the projects of Walker and his confederates have been arrested by the interposition of the United States Navy, and we may hope definitively extinguished by the reprobation expressed, and the measures adopted by the President of the United States.

Satisfied in respect to the relations between the Government of the United States and Nicaragua, and relieved of the apprehensions raised by the renewed disturbances of the peace of Central America, Her Majesty's Government are prepared, if necessary, to sanction the departure of Sir William Ouseley on his mission and the execution of his instructions in the most conciliatory spirit.

Her Majesty's Government have, however, received no reply to their proposal for arbitration, a measure which they still regard as embodying the most unexceptionable method for the settlement of existing difficulties.

In requesting to be informed of the definitive resolution of the United States Government on this point, I am enabled to add that, if their determination should be an adverse one, Her Majesty's Government would give a friendly consideration to any observations which you may be disposed to offer on the objects of the mission intrusted to Sir William Ouseley.

I have, &c.,

NAPIER.

54.—*Lord Napier to Lord Malmesbury.*

No. 56.] WASHINGTON, *March 22, 1858.* (Received April 5.)

MY LORD: The overtures made by Her Majesty's late cabinet to the Government of the United States for the adjustment of pending controversies in Central America are known to your lordship from the cor-

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respondence between the foreign office and Her Majesty's legation on this subject.

Those proposals comprise an alternative submitted to the selection of the American Government. Her Majesty's Government have offered to refer all the controverted points in the treaty of 1850 to the free arbitration of any European power, or, if more agreeable to the United States, they design to adjust the matters under discussion by negotiation with the Isthmus republics, to which, through the medium of Sir William Ouseley's mission, they are prepared to make such concessions as would carry the treaty of 1850 into operation in the most important particulars, according to the construction placed upon that instrument by the cabinet of Washington.

These modes of settlement both involve the maintenance of the Clayton-Bulwer treaty in its essential principle, viz, the neutrality of the Central American region, the exclusion of the contracting parties from territorial acquisition in a country which, from its configuration and position, possesses a common and momentous interest to the maritime powers.

The conciliatory inclinations of Her Majesty's Government have, however, not stopped here. Prompted by an impression, derived from many sources, that the obligations of the Clayton-Bulwer treaty were repugnant to the people of the United States, and influenced, no doubt, by the declaration of the President in his late message to Congress, in which he intimates a desire for the amicable dissolution of that convention, the Earl of Clarendon authorized me to imform General Cass that Her Majesty's Government would not decline the consideration of a proposal for the abrogation of the treaty by mutual concert. An official character was not given to this communication, because the recent overtures of Her Majesty's Government are still under the consideration of the President, and because it seems most natural that the proposal for the repeal of the treaty should emanate from the party to which we are told it has been onerous and unacceptable.

I have, accordingly, on two occasions informed General Cass that if the Government of the United States be still of the same mind, and continue to desire the abrogation of the treaty of 1850, it would be agreeable to Her Majesty's Government that they should insert a proposal to that effect in their reply to my note respecting arbitration, and to that in which I explained the character and motives of the mission intrusted to Her Majesty's commissioner in Central America.

Some conversation ensued regarding the manner in which the dissolution of the treaty should be effected, and the condition by which it might be accompanied, and on these topics I have held the following language, premising that the views expressed were altogether spontaneous and personal, for I had no information of the intentions of Her Majesty's Government beyond the bare fact that they would entertain a proposal to cancel the engagements of 1850, emanating from the United States.

I stated that, in my opinion, the treaty in question could only be repealed by a new treaty in the usual forms, and that it might be desirable that such a treaty should not be restricted to a single article annulling its predecessor. Both for considerations of decency and policy, I advocated the insertion of stipulations involving an expression of a common policy in Central America, and the disavowal of any exclusive or monopolizing projects on either side. I said that I thought a treaty might be framed of three articles.

The first should declare the desire of the contracting parties to en-

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courage and protect the organization of transit routes in the interoceanic region, and bind those parties never to negotiate for any rights or privileges of transit with the Central American states of a preferential or exclusive character, to which other nations might not, by negotiation, be equally admitted, establishing thus the principle of an equal enjoyment of those avenues of trade for all the countries of the world.

The second article might recognize the jurisdiction of the transit route by the San Juan River, as being vested in the Government of Nicaragua. This had been already avowed by the United States in a treaty negotiated with that republic. It had not been definitively affirmed by Great Britain, and might seem to clash with the claims of the King of Mosquito to territorial possession or authority in those parts. I thought, however, that in regard to the views lately expressed by Her Majesty's Government in the course of recent negotiations, in consideration of the necessity of obtaining a suitable treaty with Nicaragua, and for the purpose of placing themselves in harmony with the course pursued by the United States, Her Majesty's Government might, on this head, accede to an article which would practically restrict their protectorate in Mosquito, and prevent the imputation of any interference on their part with the territory traversed by the river, and therefore by the transit route.

Finally, I suggested that Article III of the treaty should simply declare the provisions of the treaty of 1850 to be void and of no effect. I added that the question of future territorial acquisition in Central America would thus be thrown open to the United States; that Her Majesty's Government, on the other hand, would retain the colony of Honduras in the proportions which might be given to it by treaty arrangements with Guatemala, and that the Bay Islands would remain attached to the British Crown. Indeed, I affirmed, still as a personal opinion, but of the most positive character, that in case of the dissolution of the Clayton-Bulwer treaty, the Bay Islands would not be relinquished by Her Majesty's Government. I felt bound to make this statement, having observed in some quarters an impression that Her Majesty's Government might be disposed not only to annul the treaty, thus opening a path for the eventual annexation of the Isthmus to the Federal Union, but to give up the Bay Islands as well; a notion altogether unfounded in any intimation which has hitherto reached me from the foreign office, and which could not be reconciled in my opinion to the interests of England.

In reply to my observations the Secretary of State remarked that he would reserve the subject for the consideration of his government. He added, as a personal impression, that he was in favor of a naked, unqualified repeal of the Clayton-Bulwer treaty without conditions, and that such a repeal should be effected in the form of a treaty, though he alluded, with a certain deprecation, to the contingency of the dissolution of the treaty by an act of Congress. He also thought, however, that the matters at issue might be adjusted through the mission of Sir William Ouseley.

I was most careful to remark throughout that the opinions I enunciated with reference to the conditions under which the treaty should be abrogated were exclusively my own; and that it belonged to the Government of the United States to offer a suggestion for the purpose in question, as the overture should proceed from them. The only point on which I spoke with determination was that of the surrender of the Bay Islands, in which I trust that I have not misinterpreted the senti-

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ments of Her Majesty's Government. On the whole, I did not think that my informal communication was as favorably received as the previous declarations of the President and the Secretary of State on this subject might have warranted me in expecting.

I have, &c.,

NAPIER.

The EARL OF MALMESBURY.

55.—*Lord Malmesbury to Lord Napier.*

No. 58.] FOREIGN OFFICE, *April 8, 1858.*

MY LORD: I have received your lordship's dispatch of the 22d ultimo, reporting your conversation with General Cass upon the disposition of Her Majesty's Government to concur in a proposal to set-aside the Clayton-Bulwer treaty, and I have to acquaint your lordship that Her Majesty's Government entirely approve of your having placed on record, by delivering to General Cass copies of those dispatches, that they were ready to abrogate that treaty.

In this state of things it will be proper that your lordship should abstain from any further discussion on that point, leaving the Government of the United States to appreciate as they may the announcement which you have thus made of the readiness of Her Majesty's Government to concur with the view of the subject expressed in the President's message; and your lordship, without further adverting to the question of abrogation, will only press for an early and decided answer to the proposal respecting arbitration which you have submitted to the Government of the United States. You will evince no eagerness for the acceptance of that proposal; neither will you exhibit anxiety for the abrogation of the treaty; and if the proposal is rejected you will not officially bring forward as the alternative the abrogation of the Clayton treaty, but announce your intention to report home and wait for instructions.

Her Majesty's Government, if the initiative is still left to them by the unwillingness of the United States themselves to propose abrogation, desire to retain full liberty as to the manner and form in which any such proposal shall be laid on their behalf before the cabinet at Washington; but, without pronouncing any decided opinion at the present moment, I think it right to point out to your lordship that the effect of such an article as that suggested in your dispatch as the second might be to perpetuate an entanglement with the Government of the United States, and to place that government in a position to question or control the free action of Her Majesty's Government in everything that relates to Central America. The Clayton-Bulwer treaty has been a source of unceasing embarrassment to this country and Her Majesty's Government, if they should be so fortunate as to extricate themselves from the difficulties which have resulted from it, will not involve themselves, directly or indirectly, in any similar difficulties for the future.

Her Majesty's Government would have no objection to enter with the United States into a self-denying engagement, such as that suggested in your first article, by which both parties should renounce all exclusive advantage in the use of any of the interoceanic routes, and should bind themselves each to the other, not to interfere with free transit. Such an article would be a suitable substitute for the Clayton-Bulwer treaty,

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for it would secure, as regards the contracting parties, the avowed object of that treaty—the freedom of interoceanic communication.

But beyond this Her Majesty's Government, as at present advised, are not prepared to contract any engagement as a substitute for the Clayton-Bulwer treaty, and from the abrogation of that compact, if it should take place, they will hold themselves as free to act in regard to Central America in the manner most conducive to the advancement of British interests and the fulfillment of British obligations as if the treaty had never been concluded.

Your lordship was, therefore, perfectly right in using decided language, such as that reported in your dispatch respecting the Bay Islands, and whenever the subject of the abrogation of the Clayton-Bulwer treaty is mooted in your presence, you will make it perfectly clear to the Government of the United States that to abrogate the treaty is to return to the *status quo ante* its conclusion in 1850; that Her Majesty's Government have no kind of jealousy respecting American colonization in Central America, which, indeed, it would help to civilize; and that we neither ask nor wish for any exclusive privileges whatever in those regions.

I am, &c.

MALMESBURY.

Lord NAPIER.

56.—*Mr. Cass to Mr. Lamar.*

[Extract.]

No. 9.] DEPARTMENT OF STATE,
Washington, July 25, 1858.

SIR: * * * These great avenues of inter-communication are vastly interesting to all commercial powers, and all may well join in securing their freedom and use against those dangers to which they are exposed from aggressions or outrages, originating within or without the territories through which they pass.

But the establishment of a political protectorate by any of the powers of Europe over any of the independent States of this continent, or, in other words, the introduction of a scheme or policy which would carry with it a right to interfere in their concerns, is a measure to which the United States have long since avowed their opposition, and which, should the attempt be made, they will resist by all the means in their power.

The reasons for the attitude they have assumed have been fully promulgated, and are everywhere well known. There is no need upon this occasion to recapitulate them. They are founded on the political circumstances of the American Continent, which has interests of its own, and ought to have a policy of its own, disconnected from many of the questions which are continually presenting themselves in Europe, concerning the balance of power, and other subjects of controversy arising out of the condition of its States, and which often find their solution or their postponement in war. It is of paramount importance to the States of this hemisphere that they should have no entangling union with the powers of the Old World; a connection which would almost necessarily make them parties to wars having no interest in them, and which would often involve them in hostilities with the other American States, contiguous or remote. The years which have passed by since this principle of separation was first announced by the United States have served still

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more to satisfy the people of this country of its wisdom and to fortify their resolution to maintain it happen what may.

The progress of events has rendered the interoceanic routes across the narrow portions of Central America vastly important to the commercial world, and especially to the United States, whose possessions extending along the Atlantic and Pacific coasts demand the speediest and easiest modes of communication. While the just rights of sovereignty of the States occupying this region should always be respected, we shall expect that these rights will be exercised in a spirit befitting the occasion and the wants and circumstances that have arisen. Sovereignty has its duties as well as its rights, and none of these local governments, even if administered with more regard to the just demands of other nations than they have been, would be permitted, in a spirit of Eastern isolation, to close these gates of intercourse on the great highways of the world, and justify the act by the pretension that these avenues of trade and travel belong to them, and that they choose to shut them, or, what is almost equivalent, to encumber them with such unjust regulations as would prevent their general use. The United States do not seek either the control or the exclusive use of these routes. They desire that the advantages should be equally common to all nations. Nor do they claim to interfere with the local governments in the determination of the questions connected with the opening of the routes, and with the persons with whom contracts may be made for that purpose. What they do desire, and mean to accomplish, is that the great interests involved in this subject should not be sacrificed to any unworthy motive, but should be guarded from abuse, and that when fair contracts are fairly entered into with American citizens, they should not be wantonly violated.

Other nations will no doubt pursue the same course in relation to their citizens or subjects who may have similar interests.

But besides these general considerations applicable to this subject, there are others which impose additional obligations upon these Isthmian Powers, and which bear with equal force upon their relations with other nations. Several of these powers, and Nicaragua especially, have in fact, by their public proceedings invited the co-operation of the capital, and industry, and enterprise of the world in order to open these lines of communication. The citizens of the United States have contributed their full share towards the accomplishment of the enterprise, and this government intends to use the means in its power to protect them in the enjoyment of their rights. The good faith of Nicaragua has been committed, and large sums have been expended looking to its faithful observance.

A paper has recently appeared in the public journals, to which I have already referred, purporting to be a contract between the governments—the Presidents rather—of Costa Rica and of Nicaragua and M. Belly, a French citizen, and his associates, constituting a new canal-route company, and providing for its operations. Nothing is known here officially of the authenticity of this paper, but it carries with it a strong probability that it is genuine, and presuming it to be so it furnishes you with an occasion to lay before these governments the views of the United States respecting their own interests and the interests of their citizens involved in the contracts for opening transit routes. So far as regards the action of Costa Rica, the President adheres to the views laid down in the instructions to our special agent, Mr. Jones, a copy of which has been communicated to those governments, and also furnished to yourself. And the United States, while they interpose no objection to an amicable adjustment by those republics of the question of their bound-

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ary line, will recognize no arrangement which interferes with the existing transit interests as insisted on in those instructions.

The United States no more claim for their citizens an exclusive right to form contracts for opening these transit routes than they claim for them the exclusive use of the routes when the work is completed. Their construction is a fair object of competition for the citizens and subjects of all other powers. The work is as open to M. Belly and his associates as to any other enterprising person. There are but two points connected with this matter which have any interest for the United States, or which would justify their intervention. The first is, that no contract with M. Belly, or with any one, indeed, should interfere with engagements previously existing with American citizens, but that all such engagements should be preserved inviolate; and the second is, that the regulations and conditions of the grant should be such as to render the routes free and safe to all nations, but controlled by no one, and upon moderate and reasonable terms. It would be equally impolitic and unjust for these governments, in a desire to make those great undertakings profitable to themselves, without furnishing any contribution towards their construction, to levy onerous charges upon the persons and property destined to pass over them, and by this means interpose serious obstacles to their general use. These local governments should look to the vast benefits which these enterprises will bring to the countries through which they pass, and not strive by excessive impositions to make them sources of revenue, and defeat, by this ill-judged measure, the very object sought to be obtained.

It is not necessary that I should enter into a detailed examination of M. Belly's contract. There are physical and financial obstacles, as well as political ones, in the way of its execution, some of which can hardly be overcome. I shall, therefore, only advert to one of the provisions, rather with a view to the future proceedings of these governments than from any practical bearing it will have in this case.

But previously to doing so I will bring to your notice one extraordinary stipulation which it could scarcely have been expected would be acceptable to the United States, and which must have been entered into in the anticipation of their objections to it. Those objections are insurmountable.

This obnoxious arrangement provides that the French Government shall have the right to keep two ships of war stationed in the waters of Lake Nicaragua for the entire duration of the works.

I am persuaded that this proposition will meet no favor from the French Government, and that its name has been introduced here unwarrantably and without its knowledge. The equality and security of these interoceanic routes constitute a great portion of their value to the world, and all commercial powers are interested in their maintenance. An exclusive right in one of these powers to exercise a permanent armed intervention would give serious cause of dissatisfaction to all the others, and the United States freely avow their determination to oppose such a measure should the Governments of Costa Rica and Nicaragua attempt to carry it into effect.

But there are additional conditions applicable to this contract with M. Belly and to other contracts for similar purposes entered into by the Government of Nicaragua which commend themselves to the Government of the United States, and will not be disregarded. There are several American citizens who, with different interests, claim to have formed engagements with the proper authorities of Nicaragua for opening and using the transit routes, with various stipulations defining their

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privileges and duties, and some of these contracts have already been in operation. This government has neither the authority nor the disposition to determine the conflicting interests of these claimants; but what it has the right to do, and what it is disposed to do, is to require that the Government of Nicaragua should act in good faith towards them, and should not arbitrarily and wrongfully divest them of rights justly acquired and solemnly guaranteed. The United States believe it to be their duty, and they mean to execute it, to watch over the persons and property of their citizens visiting foreign countries, and to intervene for their protection when such action is justified by existing circumstances and by the law of nations. Wherever their citizens may go through the habitable globe, when they encounter injustice they may appeal to the government of their country, and the appeal will be examined into with a view to such action in their behalf as it may be proper to take. It is impossible to define in advance and with precision those cases in which the national power may be exerted for their relief, or to what extent relief shall be afforded. Circumstances as they arise must prescribe the rule of action. In countries where well-defined and established laws are in operation, and where their administration is committed to able and independent judges, cases will rarely occur where such intervention will be necessary. But these elements of confidence and security are not everywhere found, and where that is unfortunately the case the United States are called upon to be more vigilant in watching over their citizens, and to interpose efficiently for their protection when they are subjected to tortious proceedings, by the direct action of the government, or by its indisposition or inability to discharge its duties.

But there is yet another consideration which calls for the attention of this government. These contracts with their citizens have a national importance. They affect not ordinary interests merely, but questions of great value, political, commercial, and social, and the United States are fully justified by the considerations already adverted to in taking care that they are not wantonly violated, and the safe establishment of an interoceanic communication put to hazard or indefinitely postponed. The course of the Government of Nicaragua with relation to these engagements contains nothing in it reassuring, for the future contracts duly executed with all the forms of law, carrying with them important vested rights, have been arbitrarily set aside by executive decrees—a mode of proceeding not recognized in the contracts themselves—and without resorting to the action of judicial tribunals. The facts in dispute have been unjustly assumed, and the hand of violence has been laid upon solemn engagements which ought to have found their security in the good faith of the government. I am not aware that in any case has the forfeiture of a contract been declared in any other way than by an arbitrary executive decree. This is a state of things to which no nation is bound to submit. It is vain to expect that the means of men and money required from other nations for the execution of these works will be furnished in the face of such manifestations of bad faith. Without confidence these great enterprises must fail; nor is it probable that one of them requiring a heavy outlay would now be undertaken and completed without some surer guarantee for their protection than would be furnished by the engagements of these Central American States. The danger of violation is too well known and appreciated to justify the expectation of the investment of capital under such unpropitious circumstances.

So long as a pecuniary object is supposed to furnish a motive for re-

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scinding existing contracts and forming new ones, without any regard to vested rights, no progress will be made in the construction of canals or of other permanent and expensive works for transportation.

The United States, acting in behalf of their citizens, object to this system of confiscation, and they do not doubt but that they will have the concurrence of all other powers who have similar interests in these vastly important measures. What the United States demand is, that in all cases where their citizens have entered into contracts with the proper Nicaraguan authorities, and questions have arisen, or shall arise, respecting the fidelity of their execution, no declaration of forfeiture, either past or to come, shall possess any binding force unless pronounced in conformity with the provisions of the contract, if there are any, or if there is no provision for that purpose, then unless there has been a fair and impartial investigation in such a manner as to satisfy the United States that the proceeding has been just and that the decision ought to be submitted to.

Without some security of this kind, this government will consider itself warranted, whenever a proper case arises, in interposing such means as it may think justifiable, in behalf of its citizens who may have been or who may be injured by such unjust assumption of power.

* * * * * * *

I am, &c.,

LEWIS CASS.

57.—*Mr. Cass to Lord Napier.*

DEPARTMENT OF STATE,
Washington, November 8, 1858.

MY LORD: I have had the honor to receive the copy which your lordship did me the favor to send me of Lord Malmesbury's dispatch to your lordship of August 18, in reference to Sir William Ouseley's mission, and have submitted it to the consideration of the President. From the statement of Lord Malmesbury that the British Government has no remaining alternative but that of "leaving the Cabinet of Washington to originate any further overtures for an adjustment of these controversies," it is quite obvious that the position of the President on this subject is not correctly understood by Her Majesty's Government. Since the announcement by your lordship in October, 1857, of Sir William Ouseley's special mission, the President has awaited not so much any new proposition for the adjustment of the Central American questions as the statement in detail which he had been led to expect of the method by which Sir William Ouseley was to carry into effect the previous proposition of the British Government. To make this plain, your lordship will pardon me for making a brief reference to what has occurred between the two governments in respect to Central America since the ratification of the Clayton-Bulwer treaty of 1850.

While the declared object of that convention had reference to the construction of a ship-canal, by the way of San Juan and the lakes of Nicaragua and Managua, from the Atlantic to the Pacific Oceans, yet it avowed none the less plainly a general principle in reference to all practicable communications across the isthmus, and laid down a distinct policy by which the practical operation of this principle was likely to be kept free from all embarrassment. The principle was that the interoceanic routes should remain under the sovereignty of the states through which

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they ran, and be neutral and free to all nations alike. The policy was, that in order to prevent any government outside of those states from obtaining undue control or influence over these interoceanic transits, no such nation should "erect or maintain any fortifications commanding the same, or in vicinity thereof, or should occupy or fortify or colonize or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America."

So far as the United States and Great Britain were concerned, these stipulations were expressed in unmistakable terms, and in reference to other nations it was declared that the contracting parties in this convention engage to invite every state with which both or either have friendly intercourse to enter into stipulations with them similar to those which they have entered into with each other. At that time the United States had no possessions whatever in Central America and exercised no dominion there. In respect to this government, therefore, the provisions of the first article of the treaty could operate only as a restriction for the future, but Great Britain was in the actual exercise of dominion over nearly the whole eastern coast of that country, and in relation to her this article had a present as well as a prospective operation. She was to abandon the occupancy which she already had in Central America, and was neither to make acquisitions or erect fortifications or exercise dominion there in the future. In other words, she was to place herself in the same position, with respect to possessions and dominion in Central America, which was to be occupied by the United States, and which both the contracting parties to the treaty engaged that they would endeavor to induce other nations to occupy. This was the treaty as it was understood and assented to by the United States, and this is the treaty as it is still understood by this government. Instead, however, of giving effect to it in this sense, the British Government proceeded in 1851, only a few months after the signature of the treaty, to establish a new British colony in Central America under the name of the "Bay Islands"; and when this government expressed its great surprise at this proceeding and at the failure of Great Britain to comply with the terms of the convention, Her Majesty's Government replied that the Islands already belonged to Great Britain at the date of the treaty, and that the convention, in their view of it, interfered with none of their existing possessions in Central America, but was wholly prospective in its character and only prevented them from making new acquisitions. It is unnecessary to do more than simply refer to the earnest and able discussions which followed this avowal, and which show more and more plainly the opposite constructions which were placed upon the treaty by the two governments.

In 1854 it was sought to reconcile these constructions and to terminate the Central American questions by the convention which was signed at London by the American minister and Lord Clarendon, usually designated the Dallas-Clarendon treaty. The terms of this treaty are, doubtless, familiar to your lordship.

It provides—

1. For the withdrawal of the British protectorate over the Mosquito Indians, and for an arrangement in their behalf upon principles which were quite acceptable to the United States.

2. It regulated the boundaries of the Belize settlements within which Great Britain claimed to exercise certain possessory rights upon terms which, although not wholly acceptable to this government, were yet in a spirit of generous concession ratified by the United States Senate.

3. It provided for a cession of the Bay Islands to Honduras (in the

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opinion of this government their rightful proprietor), but this concession was made dependent upon an unratified treaty between Great Britain and Honduras, whose terms were not officially known to this government, but which, so far as they had unofficially appeared, were not of a satisfactory character.

The Senate, therefore, in ratifying the Dallas-Clarendon treaty, felt obliged to amend it by striking out all that part of it which contemplated the concurrence of this government in the treaty with Honduras, and simply providing for a recognition by the two governments of the sovereign right of Honduras to the islands in question. Great Britain found itself unable to concur in this amendment, and the Dallas-Clarendon treaty, therefore, fell to the ground. It was clear, however, that the objections of the Senate to the Honduras treaty were not deemed unreasonable by Her Majesty's Government, because, in your lordship's interview with the President on the 22d October, 1857, your lordship "allowed that the articles establishing the administrative independence of the islands might have been larger than was necessary." "I had observed," you added, "the same impression in the correspondence of Mr. Wyke, Her Majesty's chargé d'affaires at Guatemala, who seemed to admit that a greater participation in the internal government might be granted to the authorities of Honduras," and you made "no doubt that Her Majesty's Government would entertain any reasonable suggestions which might be offered to them in that sense."

And again, in your lordship's note to this department of November 30, 1857, you recognize the same probability "that the intervention of the Honduras Government in the administration of the islands may have been more limited than was necessary or even advisable."

Such was doubtless the opinion of Honduras, for as long ago as May 10, 1857, I was informed by your lordship that the treaty remained unratified "owing to some objections on the part of the government of Honduras," and that "Her Majesty's Government does not expect that the treaty in its present shape will be definitely sanctioned by that republic."

In view of the objectionable provisions of this convention with Honduras, and of its failure to be sanctioned by that republic, your lordship, by the authority of Lord Clarendon, informed me on the 6th of May, 1857, that her Majesty's Government was prepared to sanction a new treaty, in respect to the Central American questions, which should in all respects conform to the Dallas-Clarendon treaty, as ratified by the Senate, except that to the simple recognition in the Senate's substitute for the second separate article of the sovereignty of Honduras over the Bay Islands there was to be added the following passage: "Whenever and so soon as the Republic of Honduras shall have concluded and ratified a treaty with Great Britain by which Great Britain shall have ceded and the Republic of Honduras shall have accepted the said islands subject to the provisions and conditions contained in said treaty." While this condition contemplated a new treaty with Honduras which might possibly avoid the objectionable provisions of the old one, yet it was quite impossible for the United States to become a party, either directly or indirectly, to a convention which was not in existence, or whose terms and conditions it could neither know nor control. For this reason I informed your lordship in my communication of May 29 that your lordship's proposition was declined by this government.

The attempts to adjust the Central American questions by means of a supplementary treaty having thus failed of success, and the subject not being of a character, in the opinion of the United States, to admit of

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their reference to arbitration, the two governments were thrown back upon their respective rights under the Clayton-Bulwer treaty. While each government, however, had continued to insist upon its own construction of this treaty, there was reason to believe that the embarrassments growing out of their conflicting views of its provisions might be practically relieved by direct negotiations between Her Majesty's Government and the states of Central America.

In this way it seemed possible that, without any injustice to those states, the treaty might be rendered acceptable to both countries as well as operative for the disinterested and useful purposes which it had been designed to serve. The President, therefore, was glad to learn from your lordship, on the 19th of October, 1857, that Her Majesty's Government had "resolved to dispatch a representative of authority and experience to Central America, to make a definitive settlement of all the matters with regard to which the United States and England were still at variance, and who would be instructed," as your lordship believed, "to carry the Clayton-Bulwer treaty into execution according to the general tenor of the interpretation put upon it by the United States, but to do so by separate negotiation with the Central American republics in lieu of a direct engagement with the Federal Government." This announcement could not fail to be received with satisfaction by the President, because it contemplated the substantial accomplishment of the very purposes in respect to the treaty which the United States had always had in view, and so long as these were accomplished he assured your lordship that "to him it was indifferent whether the concession contemplated by Her Majesty's Government were consigned to a direct engagement between England and the United States or to treaties between the former and the Central American republics; the latter method might, in some respects," he added, "be even more agreeable to him, and he thought it would be more convenient to Her Majesty's Government, who might, with greater facility, accede to the claims of the weaker party."

It is unnecessary to refer at length to what was said in this conversation, or to a second one on the same subject which your lordship had with the President on the evening of October 23; but there can be no doubt that in both interviews the expected mission of Sir William Ouseley (who it was understood had been selected as the plenipotentiary referred to), in connection with what your lordship indicated as his probable instructions, was favorably regarded by the President. So much was this the case, that he gave your lordship his full assurance that should your lordship's announcement be confirmed by any official information such as he could use, he would change that part of his message which related to Great Britain, would encourage no attempt in Congress to annul the treaty while the mission was in progress, and nothing would give him greater pleasure, he said, "than to add the expression of his sincere and ardent wish for the maintenance of friendly relations between the two countries."

At the close of the second interview, he even went so far as to remark, in reference to the extended boundary claimed by Great Britain for the Belize (to which he had ever objected), that he could take no absolute engagement in this matter; but he would say this much, "that if the Bay Islands were fairly and handsomely evacuated, such a measure would have a great effect with him, and with the American people, in regard to the settlement of the other points at issue."

Sir William Ouseley arrived in Washington about the middle of No-

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vember, and on the 30th of November I received from your lordship an official statement in outline of the purposes of his mission.

On the 5th December, your lordship inclosed to me a copy of Lord Clarendon's dispatch of November 20, in which your lordship's previous statement was substantially confirmed, and in which it was further stated that "Sir William Ouseley, during his visit to Washington, will, in pursuance of his instructions, have explained with the utmost frankness to the Government of the United States the nature of the instructions with which he is furnished, and your lordship, as the duly accredited organ of Her Majesty's Government, will have given similar explanations."

The objects of Sir William Ouseley's mission, as thus made known to the United States, were:

1. To provide for the transfer by Great Britain of the Bay Islands to the Government of Honduras; and in this transfer it was especially declared that the stipulations in the British treaty with Honduras were not to be rigidly adhered to. Sir William Ouseley, on the contrary, while requiring provisions to secure the vested rights of British subjects in the Bay Islands, was to be left at liberty to contract engagements with Honduras which should embody not only an unmistakable recognition of its sovereignty over these islands, but should allow of a more direct government and a more efficient protection over them by that republic than had been contained in the convention of 1856.

2. The second object of Sir William Ouseley's mission was the settlement of the question of the Mosquito protectorate with Nicaragua and Honduras. Whilst he was to provide for the compensation, the government, and the protection of the Mosquito Indians under the sovereignty of Nicaragua, this was to be done upon terms not less favorable than those which had received the approbation of the Senate in the Dallas-Clarendon treaty. In no degree was the Indian reserve to trespass on the territory applicable to transit purposes.

3. The regulation of the frontier of British Honduras was to be effected by negotiation with the Government of Guatemala. Her Majesty's Government trusted to obtain from that republic a recognition of limits "which, if we may judge from previous communications on the subject, may be accepted in a spirit of conciliation, if not with absolute approval, by the President."

Such were the overtures communicated by your lordship's note to this Department of November 30, and which were again referred to in Lord Clarendon's note to your lordship of November 20, of which you inclosed to me a copy in your lordship's note of December 5. Inasmuch as the announcement of Sir William Ouseley's mission, with the explanation by your lordship of its general purposes, had been received with much satisfaction by the President, there were some expressions in this note of Lord Clarendon's which it was not easy to understand; but which, nevertheless, did not materially change the general character of the overtures. It was still stated in that dispatch "that the objections entertained in the United States to the construction placed upon that treaty by the British Government are, as every impartial person must admit, in a fair way to be removed by the voluntary act of the latter; and while the objects of Sir William's mission continued to be mentioned in only general terms, it was yet added that during his visit to Washington he will, in pursuance of his instructions, have explained with the utmost frankness the nature of the instructions with which he is furnished, and your lordship, as the duly accredited organ of Her Majesty in the United States, will have given similar explanations."

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The President did not hesitate, therefore, in his message to Congress, to refer to these overtures as having recently been made by the British Government in a friendly spirit, which he cordially reciprocated. He could do no more than this, whatever might be his hopes for the success of Sir William's mission, until he had received the further explanations concerning it which he had been led to expect, and which he was prepared to consider in the kindest and most respectful manner. The general remarks contained in the outline of November 30 must have been molded into some specific form, in order to enable this government to arrive at a practical decision upon the questions presented to it. This I understood to be the view of your lordship and Sir William Ouseley, as well as that of the president and this Department. Indeed, it was wholly in conformity with this view that Sir William Ouseley was understood to have called at Washington on his way to Central America. Had he proceeded directly to his destination, and there, by separate treaties with the Central American republics, given substantial effect to the Clayton-Bulwer convention, according to the general tenor of the American construction of that instrument, the Central American controversy would then have been fortunately terminated to the satisfaction of both governments. But since this government, in a spirit of comity, which the President fully appreciates, was asked to co-operate in accomplishing this result, it was surely not unreasonable that it should know specifically the arrangements which it was expected to sanction.

The general objects in view, we were acquainted with and approved, but there was no draft of a treaty, no form of separate article, no definition of measures. The Bay Islands were to be surrendered, but under what restrictions? The Dallas-Clarendon treaty was to be modified, but what were the modifications? The rights of British subjects and the interests of British trade were to be protected in Ruatan, but to what extent and by what conditions? Honduras was to participate more largely in the government of the Bay Islands than she was allowed to do by the convention of 1856, but how far was she to be restrained and what was to be her power?

These and other similar questions naturally arose upon the general overtures contained in your lordship's note of November 30, and seemed naturally enough to justify the hope which was entertained of some further explanation of these overtures. In all my conversations with your lordship on the subject of Sir William's mission, subsequent to the meeting of Congress, this expectation of some further and more definite communication concerning it was certainly taken for granted, and until time was given to receive such a communication, you did not press for any answer to your lordship's note of November 30. In the beginning your lordship seemed to think that some embarrassment or delay in prosecuting the mission might be occasioned by the expedition to Nicaragua which had been undertaken by General Walker, and by the Cass-Yrisarri treaty which had been negotiated with that republic by the United States; but the treaty was not disapproved by Her Majesty's Government and the expedition of Walker was promptly repressed, so that no embarrassment from these sources could be further apprehended. As the delay still continued, it was suggested by your lordship, and fully appreciated by me, that Her Majesty's Government was necessarily occupied with the affairs of Her Majesty's possessions in India, which then claimed its immediate attention to the exclusion naturally of business which was less pressing, and hence I awaited the expected instructions without any anxiety whatever. All this is precisely what your lordship very frankly describes in your lordship's communication to this

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Department of April 12, 1858. "I addressed my government," your lordship says, "with a view to obtaining further explanations and instructions, and I informed you that it was not my desire to press for an official reply to the overtures of the Earl of Clarendon pending an answer from London."

The explanations, however, anticipated by your lordship and by myself were not received, and about three months after the arrival of Sir William at Washington you expressed to me your regret that you had held out expectations which proved unfounded and which had prompted delay, and then for the first time requested an answer to the proposals of Her Majesty's Government, and "especially to that part of them relating to arbitration." It was even then suggested that the answer was desired because it was thought to be appropriate as a matter of form and not because the explanations which had been waited for were deemed wholly unnecessary. "I overlooked something due to forms," is your lordship's language in the note of April 12, "in my anxiety to promote a clearer understanding, and I eventually learned in an official shape that Her Majesty's Government, following their better judgment, desired, before making any further communication, a reply to their overtures, and especially to that part of them referring to arbitration. Should the new proffer of arbitration be declined, it was clearly not supposed in your note of February 15 that this result would have any tendency to interrupt Sir William's efforts; but in that event it was hoped," you informed me, that these efforts "would result in a settlement agreeable to the United States, inasmuch as in essential points it would carry the treaty of 1850 into operation in a manner practically conformable to the American interpretation of that instrument."

On the 6th of April I replied to your lordship's note of February 15, with a very frank and full statement of the views of this government upon all the points to which your lordship had referred. The renewed offer of arbitration mentioned in a dispatch of Lord Clarendon was explicitly declined for the same reasons which had occasioned its rejection before, but an earnest hope was expressed for the success of Sir William Ouseley's mission, and I was instructed formally to request from your lordship those further explanations concerning it, which had been promised in Lord Clarendon's note of November 20, for which both your lordship and myself had waited for three months in vain, and which, up to this time, have never been furnished to the American Government. The disappointment which the President felt at some portions of the correspondence which had occurred, and especially at the failure of Her Majesty's Government to inform him more fully than it had done, on the subject of the mission, was communicated to your lordship without the least reserve, but in the purposes of that mission, so far as he understood them, I was authorized to say that he fully concurred, and to add his sincere hope that they might be successfully accomplished.

"The President," I informed you, "has expressed his entire concurrence in the proposal for an adjustment of the Central American questions, which was made to him by your lordship last October, and he does not wish that any delay or defeat of that adjustment shall be justly chargeable to this government. Since, however, he is asked to co-operate in the arrangement by which it is expected to accomplish it, it is essential that he should know with reasonable accuracy what those arrangements are." It was in the hope of this adjustment, as well as with a view to the serious consequences which might flow from a naked repeal of the Clayton-Bulwer treaty, that I made the observations on that subject which are contained in my letter to your lordship of April 6. No de-

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mand for this abrogation, your lordship is well aware, had then been made by Her Majesty's Government; but your lordship had several times suggested to me that such an alternative, if proposed by the United States, would be respectfully considered by Great Britain, and in your lordship's belief might in some form or other be finally adopted. You informed me, however, at the same time that in that event Great Britain would not be inclined to surrender its possessions in Central America, and would certainly continue to occupy the Bay Islands. In reply to this announcement, I informed your lordship that since it is well known that the views of this government are wholly inconsistent with these pretensions, and that it can never willingly acquiesce in their maintenance by Great Britain, your lordship will readily perceive what serious consequences might follow a dissolution of the treaty, if no provision should be made at the same time for adjusting the questions which led to it.

"If, therefore," I added, "the President does not hasten to consider now the alternative of repealing the treaty of 1850, it is because he does not wish to anticipate the failure of Sir William Ouseley's mission, and is disposed to give a new proof to Her Majesty's Government of his sincere desire to preserve the amicable relations which now happily subsist between the two countries."

Having thus complied with your lordship's request, and given that formal reply to the overtures embraced in Sir William Ouseley's mission which was desired by Her Majesty's Government, I confidently expected to receive within a reasonable time these additional instructions which appeared to have been delayed for this reply. Such, doubtless, was the hope, also, of your lordship. "The discussion has been deferred," you informed me in your note of April 12, "but the interests at stake have probably not suffered." The results of the negotiation between Nicaragua and the United States are not yet disclosed, and it is probable that Sir William Ouseley may proceed to his destination with more advantage when the nature of those engagements is fully defined." "If the American Cabinet," you also said, "as may be inferred from your expressions, be well disposed toward Sir William Ouseley's mission, and will meet her Majesty's Government in a liberal spirit on matters of secondary moment, that mission may still conduct us to a happy termination." In further informing me that my communication would be transmitted to Her Majesty's Government, you added, "It remains with Her Majesty's Government to determine whether they can afford the more perfect information desired."

This was the state of the negotiation in April, 1858. The purposes of Sir William Ouseley's mission had been announced to the American Government and approved; reference had been made by Lord Clarendon to your lordship and Sir William Ouseley for further explanations; these explanations had been asked for from your lordship in repeated interviews, but your lordship had not received the necessary instructions to make them until a reply had been received to the general overtures embraced in your previous notes, and especially to that part of them relating to arbitration; this reply had been given, still approving the mission and rejecting the arbitration; and it had been sent to London for the consideration of Her Majesty's Government.

Under these circumstances, I need not describe to your lordship the surprise with which I received the copy of Lord Malmesbury's dispatch to your lordship, dated at Potsdam, August 18, which you were good enough to inclose to me. In this dispatch, instead of affording any more exact definition of the objects of Sir William Ouseley's mission, your

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lordship is directed to inform me that Her Majesty's Government "have, in fact, nothing to add to the explanations given by Sir William and your lordship upon the subject." As no explanations whatever had been received from either Sir William or yourself since the communication of November 30, it is obvious that his lordship must labor under some misapprehension on this subject; and equally clear is it that when his lordship represents me as having declared in my note of the 6th of April that the Government of the United States could not agree to the abrogation of the Clayton-Bulwer treaty, that he has failed to appreciate fully the views of the United States in reference to that abrogation. The declaration in my note of April 6 was certainly not against any abrogation of the treaty, but against considering the expediency of abrogating it at that particular time, and until hopes were at an end for a successful termination of Sir William Ouseley's mission. This waiver of a discussion on the subject of abrogation, in deference to the purposes of that mission, indicated very clearly, it seems to me, how much was expected by this government from Sir William Ouseley's mission. Yet even these efforts Lord Malmesbury seems to regard as having been rejected by the United States, and Her Majesty's Government, he concludes, have no alternative but that of leaving to the Cabinet of Washington to originate any further overtures for an adjustment of these controversies.

Surely, my lord, there must be some grave misapprehension in all this of the views entertained and expressed by this government upon the proposals embraced in your lordship's note of November 30, or else this government has labored under an equally serious error as to what was intended by Sir William Ouseley's mission. It is under this impression, and in order to prevent two great nations from failing in their attempts to adjust an important controversy from a mere question of form, or a mere misunderstanding of each other's views, that I have entered into this extended narrative. It is of no small consequence, either to the United States or Great Britain, that these Central American controversies between the two countries should be forever closed.

On some points of them, and I have been led to hope on the general policy which ought to apply to the whole Isthmian region, they have reached a common ground of agreement.

The neutrality of the interoceanic routes and their freedom from the superior and controlling influence of any one government, the principles upon which the Mosquito protectorate may be arranged, with justice alike to the sovereignty of Nicaragua and the Indian tribes, the surrender of the Bay Islands under certain stipulations for the benefit of trade and the protection of their British occupants, and the definition of the boundaries of the British Belize—about all these points there is no apparent disagreement except as to the conditions which shall be annexed to the Bay Islands' surrender, and as to the limits which shall be fixed to the settlements of the Belize. Is it possible that, if approached in a spirit of conciliation and good feeling, these two points of difference are not susceptible of a friendly adjustment? To believe this would be to underestimate the importance of the adjustment, and the intelligent appreciation of this importance which must be entertained by both nations.

What the United States want in Central America, next to the happiness of its people, is the security and neutrality of the interoceanic routes which lead through it. This is equally the desire of Great Britain, of France, and of the whole commercial world. If the principles and policy of the Clayton-Bulwer treaty are carried into effect, this ob-

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ject is accomplished. When, therefore, Lord Malmesbury invites new overtures from this government upon the idea that it has rejected the proposal embraced in Sir William Ouseley's mission for an adjustment of the Central American questions by separate treaties with Honduras, Nicaragua, and Guatemala, upon terms substantially according with the general tenor of the American interpretation of the treaty, I have to reply that this very adjustment is all that the President ever desired, and that instead of having rejected that proposal he had expressed his cordial acceptance of it so far as he understood it, and had anticipated from it the most gratifying consequences.

Nothing now remains for me but to inquire of your lordship whether the overtures contained in your lordship's note of November 30, are to be considered as withdrawn by Her Majesty's Government, or whether the good results expected in the beginning from Sir William Ouseley's mission may not yet be happily accomplished.

I have, &c.,

LEWIS CASS.

58.—*Lord Malmesbury to Lord Napier.*

[Extract.]

FOREIGN OFFICE, *December 8, 1858.*

MY LORD: I have to inform your lordship that Her Majesty's Government have received with lively satisfaction the note which General Cass addressed to your lordship on the 8th of November. The friendly tone in which it is written, and the high appreciation which it displays of the importance of terminating the irritating discussions in which both our countries have been so long involved, cannot but tend to render that termination near at hand and permanent.

I feel it to be a duty to do justice to the accuracy with which General Cass has recapitulated the circumstances under which the controversy has been sustained, and the efforts hitherto employed to settle it have failed.

* * * * * * *

I am, &c.,

MALMESBURY.

59.—*Convention between Great Britain and Guatemala. Signed at Guatemala April 30, 1859.*

Whereas the boundary between Her Britannic Majesty's settlement and possessions in the Bay of Honduras and the territories of the Republic of Guatemala has not yet been ascertained and marked out; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the Republic of Guatemala, being desirous, with a view to improve and perpetuate the friendly relations which happily subsist between the two countries, to define the boundary aforesaid have resolved to conclude a convention for that purpose, and have named as their plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Charles Lennox Wyke, esquire, Her Britannic Majesty's chargé d'affaires to the Republic of Guatemala, and his excellency the President of the Republic of Guatemala, Don Pedro de Aycinena, councillor of state and minister for foreign affairs;

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Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

ART. I. It is agreed between Her Britannic Majesty and the Republic of Guatemala, that the boundary between the republic and the British settlement and possessions in the Bay of Honduras, as they existed previous to and on the 1st day of January, 1850, and have continued to exist up to the present time, was and is as follows:

Beginning at the mouth of the River Sarstoon, in the Bay of Honduras, and proceeding up the mid-channel thereof to Gracias á Dios Falls; then turning to the right and continuing by a line drawn direct from Gracias á Dios Falls to Garbutt's Falls, on the River Belize, and from Garbutt's Falls due north until it strikes the Mexican frontier.

It is agreed and declared between the High Contracting Parties that all the territory to the north and east of the line of boundary above described belongs to Her Britannic Majesty; and that all the territory to the south and west of the same belongs to the Republic of Guatemala.

ART. II. Her Britannic Majesty and the Republic of Guatemala shall, within 12 months after the exchange of the ratifications of the present convention, appoint each a commissioner for the purpose of designating and marking out the boundary described in the proceding article. Such commissioners shall ascertain the latitude and longitude of Gracias á Dios Falls and of Garbutt's Falls, and shall cause the line of boundary between Garbutt's Falls and the Mexican territory to be opened and marked where necessary, as a protection against future trespass.

ART. III. The commissioners mentioned in the preceding article shall meet at such place or places as shall be hereafter fixed, at the earliest convenient period after they shall have been respectively named; and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, without fear, favour, or affection to their own country, upon all the matters referred to them for their decision, and such declaration shall be entered on the record of their proceedings. The commissioners shall then, and before proceeding to any other business, name some third person to act as arbitrator or umpire in any case or cases in which they may themselves differ in opinion. If they should not be able to agree upon the choice of such a third person, they shall each name a person; and in each and every case in which the commissioners may differ in opinion as to the decision which they ought to give, it shall be determined by lot which of the two persons so named shall be the arbitrator or umpire in that particular case. The person or persons so to be chosen shall, before proceeding to act, make and subscribe a solemn declaration, in a form similar to that which shall already have been made and subscribed by the commissioners, which declaration shall also be entered on the record of the proceedings. In the event of the death, absence, or incapacity of either of such commissioners, or of either of such arbitrators or umpires, or of his omitting, or declining, or ceasing to act, another person shall be named, in the same manner, to act in his place or stead, and shall make and subscribe such declaration as aforesaid.

Her Britanic Majesty and the Republic of Guatemala shall engage to consider the decision of the two commissioners conjointly, or of the arbitrator or umpire, as the case may be, as final and conclusive on the matters to be respectively referred to their decision, and forthwith to give full effect to the same.

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ART. IV. The commissioners hereinbefore mentioned shall make to each of the respective governments a joint report or declaration, under their hands and seals, accompanied with a map or maps in quadruplicate (two for each government), certified by them to be true maps of the boundary defined in the present treaty, and traversed and examined by them.

ART. V. The commissioners and the arbitrator or umpire shall keep accurate records and correct minutes or notes of all their proceedings, with the dates thereof, and shall appoint and employ such surveyors, clerk or clerks, or other persons as they shall find necessary to assist them in the transaction of the business which may come before them.

The salaries of the commissioners shall be paid by their respective governments. The contingent expenses of the commission, including the salary of the arbitrator or umpire, and of the surveyors and clerks, shall be defrayed in equal moieties by the two governments.

ART. VI. It is further agreed that the channels in the water-line of boundary described in Article I of the present convention shall be equally free and open to the vessels and boats of both parties, and that any islands which may be found therein shall belong to that party on whose side of the main navigable channel they are situated.

ART. VII. With the object of practically carrying out the views set forth in the preamble of the present convention for improving and perpetuating the friendly relations which at present so happily exist between the two High Contracting Parties, they mutually agree conjointly to use their best efforts, by taking adequate means for establishing the easiest communication (either by means of a cart-road or employing the rivers, or both united, according to the opinion of the surveying engineers) between the fittest place on the Atlantic coast, near the settlement of Belize and the capital of Guatemala, whereby the commerce of England on the one hand, and the material prosperity of the Republic on the other, cannot fail to be sensibly increased, at the same time that the limits of the two countries being now clearly defined, all further encroachments by either party on the territory of the other will be effectually checked and prevented for the future.

ART. VIII. The present convention shall be ratified, and the ratifications shall be exchanged at London or Guatemala as soon as possible within the space of 6 months.

In witness whereof, the respective plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Guatemala, the 30th day of April, in the year 1859.

[L. S.] CHARLES LENNOX WYKE.
[L. S.] P DE AYCINENA.

60.—*Treaty between Great Britain and Honduras respecting the Bay Islands, the Mosquito Indians, and the rights and claims of British subjects, signed at Comayagua, November 28, 1859.*

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the Republic of Honduras, being desirous to settle in a friendly manner certain questions in which they are mutually interested, have resolved to conclude a Treaty for that purpose, and have named as their Plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Charles Lennox Wyke, esquire, Companion of the Most Honor-

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able Order of the Bath, Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, on a special mission to the Republics of Central America; and his Excellency the President of the Republic of Honduras, Don Francisco Cruz, Political Chief of the Department of Comayagua.

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

ART. I. Taking into consideration the peculiar geographical position of Honduras, and in order to secure the neutrality of the islands adjacent thereto, with reference to any railway or other line of interoceanic communication which may be constructed across the territory of Honduras on the mainland, Her Britannic Majesty agrees to recognize the Islands of Ruatan, Guanaca, Elena, Utile, Barbarete, and Morat, known as the Bay Islands, and situated in the Bay of Honduras, as a part of the Republic of Honduras.

The inhabitants of the said islands shall not be disturbed in the enjoyment of any property which they may have acquired therein, and shall retain perfect freedom of religious belief and worship, public and private, but remaining in all other respects subject to the laws of the Republic. If any of them should wish to withdraw from the islands, they shall be at full liberty to do so; to dispose of their fixed or other property as they may think fit, and to take with them the proceeds thereof.

The Republic of Honduras engages not to cede the said islands, or any of them, or the right of sovereignty over such islands, or any of them, or any part of such sovereignty, to any nation or state whatsoever.

ART. II. Her Britannic Majesty engages, subject to the conditions and engagements specified in the present Treaty, and without prejudice to any question of boundary between the Republics of Honduras and Nicaragua, to recognize as belonging to and under the sovereignty of the Republic of Honduras the country hitherto occupied or possesed by the Mosquito Indians within the frontier of that Republic, whatever that frontier may be. The British protectorate of that part of the Mosquito territory shall cease 3 months after the exchange of the ratifications of the present treaty, in order to enable Her Majesty's Government to give the necessary instructions for carrying out the stipulations of said treaty.

ART. III. The Mosquito Indians in the district recognized by Article II of this treaty as belonging to and under the sovereignty of the Republic of Honduras shall be at liberty to remove, with their property, from the territory of the Republic, and to proceed whithersoever they may desire, and such of the Mosquito Indians who remain within the said district shall not be disturbed in the possession of any lands or other property which they may hold or occupy, and shall enjoy, as natives of the Republic of Honduras, all rights and privileges enjoyed generally by the natives of the Republic.

The Republic of Honduras being desirous of educating the Mosquito Indians, and improving their social condition in the district so occupied by them, will grant an annual sum of 5,000 dollars, in gold or silver, for the next 10 years for that purpose, to be paid to their headman in the said district, the payment of such annual sum being guaranteed them by a mortgage on all woods and other natural productions (whatever they may be) of the state lands in the Bay Islands and the Mosquito territory. These payments shall be made in half-yearly instalments of 2,500 dollars each, the first of which payments shall be made 6 months after the exchange of the ratifications of the present treaty.

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ART. IV. Whereas British subjects have, by grant, lease, or otherwise, heretofore obtained from the Mosquito Indians interests in various lands situated within the district mentioned in the preceding article, the Republic of Honduras engages to respect and maintain such interests; and it is further agreed that Her Britannic Majesty and the Republic shall, within 12 months after the exchange of the ratifications of the present Treaty, appoint two commissioners, one to be named by each party, in order to investigate the claims of British subjects arising out of such grants or leases, or otherwise, and all British subjects whose claims shall, by the commissioners, be pronounced well founded and valid, shall be quieted in the possession of their respective interests in the said lands.

ART. V. It is further agreed between the contracting parties that the commissioners mentioned in the preceding article shall also examine and decide upon any British claims upon the Government of Honduras that may be submitted to them, other than those specified in that article, and not already in a train of settlement; and the Republic of Honduras agrees to carry into effect any agreements for the satisfaction of British claims already made, but not yet carried into effect.

ART. VI. The commissioners mentioned in the preceding articles shall meet in the city of Guatemala, at the earliest convenient period after they shall have been respectively named, and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, without fear, favor, or affection to their own country, all the matters referred to them for their decision, and such declaration shall be entered on the record of their proceedings.

The commissioners shall then, and before proceeding to any other business, name some third person to act as an arbitrator or umpire in any case or cases in which they may themselves differ in opinion. If they should not be able to agree upon the selection of such a person, the commissioner on either side shall name a person; and in each and every case in which the commissioners may differ in opinion as to the decision which they ought to give, it shall be determined by lot which of the two persons so named shall be arbitrator or umpire in that particular case. The person or persons so to be chosen shall, before proceeding to act, make and subscribe a solemn declaration, in a form similar to that which shall already have been made and subscribed by the commissioners, which declaration shall also be entered on the record of the proceedings.

In the event of the death, absence, or incapacity of such person or persons, or of his or their omitting, or declining, or ceasing to act as such arbitrator or umpire, another person or persons shall be named as aforesaid to act as arbitrator or umpire in his or their place or stead, and shall make and subscribe such declaration as aforesaid.

Her Britannic Majesty and the Republic of Honduras hereby engage to consider the decision of the commissioners conjointly, or of the arbitrator or umpire, as the case may be, as final and conclusive on the matters to be referred to their decision; and they further engage forthwith to give full effect to the same.

ART. VII. The commissioners and the arbitrator or umpire shall keep an accurate record and correct minutes or notes of all their proceedings, with the dates thereof, and shall appoint and employ a clerk or other persons to assist them in the transaction of the business which may come before them.

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The salaries of the commissioners shall be paid by their respective governments. The contingent expenses of the commission, including the salary of the arbitrator or umpire, and of the clerk or clerks, shall be defrayed in equal halves by the two governments.

ART. VIII. The present Treaty shall be ratified, and the ratifications shall be exchanged at Comayagua as soon as possible within 6 months from this date.

In witness whereof, the respective plenipotentiaries have signed the same, and have affixed thereto their respective seals.

Done at Comayagua the 28th day of November, in the year of our Lord 1859.

[L. S.] C. LENNOX WYKE.
[L. S.] FRANCISCO CRUZ.

61.—*Treaty between Great Britain and Nicaragua relative to the Mosquito Indians and to the rights and claims of British subjects. Signed at Managua January 28, 1860.*

Her Majesty the Queen of the United Kingdom of Great Britian and Ireland, and the Republic of Nicaragua, being desirous to settle in a friendly manner certain questions in which they are mutually interested, have resolved to conclude a Treaty for that purpose, and have named as their plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Charles Lennox Wyke, esquire, Companion of the Most Honorable Order of the Bath, Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary on a special mission to the Republics of Central America; and his Excellency the President of the Republic of Nicaragua, Don Pedro Zeledon, Minister for Foreign Affairs.

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

ART. I. On exchanging the ratifications of the present Treaty, Her Britannic Majesty, subject to the conditions and engagements specified therein, and without prejudice to any question of boundary between the Republics of Nicaragua and Honduras, will recognize as belonging to and under the sovereignty of the Republic of Nicaragua the country hitherto occupied or claimed by the Mosquito Indians within the frontier of that Republic, whatever that frontier may be.

The British protectorate of that part of the Mosquito territory shall cease three months after the exchange of the ratifications of the present Treaty; in order to enable Her Majesty's Government to give the necessary instructions for carrying out the stipulations of said treaty.

II. A district within the territory of the Republic of Nicaragua shall be assigned to the Mosquito Indians, which district shall remain, as above stipulated, under the sovereignty of the Republic of Nicaragua. Such district shall be comprised in a line, which shall begin at the mouth of the river Rama, in the Caribbean Sea; thence it shall run up the mid-course of that river to its source, and from such source proceed in a line due west to the meridian of 84° 15′ longitude west from Greenwich; thence due north up the said meridian until it strikes the river Hueso, and down the mid-course of that river to its mouth in the sea, as laid down in Baily's map at about latitude from 14° to 15° north, and longitude 83° west from the meridian of Greenwich; and thence

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southerly along the shore of the Caribbean Sea to the mouth of the river Rama, the point of commencement. But the district thus assigned to the Mosquito Indians may not be ceded by them to any foreign person or state, but shall be and remain under the sovereignty of the Republic of Nicaragua.

III. The Mosquito Indians within the district designated in the preceding article shall enjoy the right of governing according to their own customs, and according to any regulations which may from time to time be adopted by them, not inconsistent with the sovereign rights of the Republic of Nicaragua, themselves, and all persons residing within such district. Subject to the above-mentioned reserve, the Republic of Nicaragua agrees to respect and not to interfere with such customs and regulations so established or to be established within the said district.

IV. It is understood, however, that nothing in this treaty shall be construed to prevent the Mosquito Indians at any future time from agreeing to absolute incorporation into the Republic of Nicaragua on the same footing as other citizens of the republic, and from subjecting themselves to be governed by the general laws and regulations of the republic instead of by their customs and regulations.

V. The Republic of Nicaragua, being desirous of promoting the social improvement of the Mosquito Indians, and of providing for the maintenance of the authorities to be constituted under the provisions of Article III of this treaty, in the district assigned to the said Indians, agrees to grant to the said authorities, for the space of 10 years, with a view to such purposes, an annual sum of 5,000 hard dollars. The said sum shall be paid at Greytown, by half-yearly payments, to such persons as may be authorized by the chief of the Mosquito Indians to receive the same, and the first payment shall be made 6 months after the exchange of the ratifications of the present treaty.

For the payment of this sum Nicaragua will levy and especially consign a duty, to be levied according to weight, on all packages of goods that are imported into that port for consumption in the territory of the republic; and in case this duty shall not suffice for the payment of said sum, the deficit shall be made up from the other duties levied in the republic.

VI. Her Britannic Majesty engages to use her good offices with the chief of the Mosquito Indians, so that he shall accept the stipulations which are contained in this convention.

VII. The Republic of Nicaragua shall constitute and declare the port of Greytown, or San Juan del Norte, a free port under the sovereign authority of the republic. But the Republic, taking into consideration the immunities heretofore enjoyed by the inhabitants of Greytown, consents that trial by jury in all cases, civil or criminal, and perfect freedom of religious belief and worship, public and private, such as has hitherto been enjoyed by them up to the present moment, shall be guaranteed to them for the future.

No duties or charges shall be imposed upon vessels arriving in or departing from the free port of Greytown, other than such as may be sufficient for the due maintenance and safety of the navigation, for providing lights and beacons, and for defraying the expense of the police of the port; neither shall any duties or charges be levied in the free port on goods arriving therein, in transit from sea to sea. But nothing contained in this article shall be construed to prevent the Republic of Nicaragua from levying the usual duties on goods destined for consumption within the territory of the republic.

VIII. All *bona fide* grants of land for due consideration, made in the

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name and by the authority of the Mosquito Indians since the 1st of January, 1848, and lying beyond the limits of the territory reserved for the said Indians, shall be confirmed, provided the same shall not exceed in any case the extent of 100 yards square, if within the limits of San Juan or Greytown, or one league square if without the same, and provided that such grant shall not interfere with other legal grants made previously to that date by Spain, the Republic of Central America, or Nicaragua; and provided further, that no such grant shall include territory desired by the government of the latter state for forts, arsenals, or other public buildings. This stipulation only embraces those grants of land made since the 1st of January, 1848.

In case, however, any of the grants referred to in the preceding paragraph of this article should be found to exceed the stipulated extent, the commissioners hereinafter mentioned shall, if satisfied of the *bona fides* of any such grants, confirm to the grantee or grantees, or to his or their representatives or assigns, an area only equal to the stipulated extent.

And in case any *bona fide* grant, or any part thereof, should be desired by the government for forts, arsenals, or other public buildings, an equivalent extent of land shall be allotted to the grantees elsewhere.

*It is understood that the grants of land treated of in this article shall not extend to the westward of the territory reserved for the Mosquito Indians in Article II further than 84° 30′ of longitude, in a line parallel and equal with that of said territory on the same side; and if it should appear that any grants have been made further in the interior of the republic, the lands acquired *bona fide* shall be replaced with those that are within the limits defined under the regulations agreed upon.

IX. Her Britannic Majesty and the Republic of Nicaragua shall, within 6 months after the exchange of the ratifications of the present treaty, appoint each a commissioner for the purpose of deciding upon the *bona fides* of all grants of land mentioned in the preceding article as having been made by the Mosquito Indians of lands heretofore possessed by them, and lying beyond the limits of the territory described in Article I.

X. The commissioners mentioned in the preceding article shall, at the earliest convenient period after they shall have been respectively named, meet at such place or places as shall be hereafter fixed; and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, without fear, favor, or affection to their own country, all the matters referred to them for their decision; and such declaration shall be entered on the record of their proceedings.

The commissioners shall then, and before proceeding to any other business, name some third person to act as arbitrator or umpire in any case or cases in which they may themselves differ in opinion. If they should not be able to agree upon the selection of such a person, the commissioner on either side shall name a person, and in each and every case in which the commissioners may differ in opinion as to the decision which they ought to give, it shall be determined by lot which of the two persons so named shall be arbitrator or umpire in that particular case. The person or persons so to be chosen shall, before proceeding to act, make and subscribe a solemn declaration, in a form similar to that which shall already have been made and subscribed by the commissioners, which declaration shall also be entered on the record of the proceedings.

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* See declaration, August 2d, 1860, page 154.

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In the event of the death, absence, or incapacity of such person or persons, or of his or their omitting, or declining, or ceasing to act as such arbitrator or umpire, another person or other persons shall be named as aforesaid to act in his or their place or stead, and shall make and subscribe such declaration as aforesaid.

Her Britannic Majesty and the Republic of Nicaragua shall engage to consider the decision of the two commissioners conjointly, or of the arbitrator or umpire, as the case may be, as final and conclusive on the matters to be referred to their decision, and forthwith to give full effect to the same.

XI. The commissioners and the arbitrators or umpires shall keep accurate records and correct minutes or notes of all their proceedings, with the dates thereof, and shall appoint and employ such clerk or clerks, or other persons, as they shall find necessary to assist them in the transaction of the business which may come before them.

The salaries of the commissioners and of the clerk or clerks shall be paid by their respective governments.

The salary of the arbitrators or umpires and their contingent expenses shall be defrayed in equal moieties by the two governments.

XII. The present Treaty shall be ratified by Her Britannic Majesty, and by the Congress of the Republic of Nicaragua, and the ratifications shall be exchanged at London as soon as possible within the space of six months.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto their respective seals.

Done at Managua, this 28th day of January, in the year of our Lord 1860.

[L. S.] CHARLES LENNOX WYKE.
[L. S.] PEDRO ZELEDON.

DECLARATION.

In proceeding to the exchange of the ratifications of the Treaty concluded and signed at Managua on the 28 of January, 1860, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the Republic of Nicaragua, relative to the Mosquito Indians and to the rights and claims of British subjects, the undersigned, Her Britannic Majesty's principal Secretary of State for Foreign Affairs, and the Envoy Extraordinary and Minister Plenitotentiary of the Republic of Nicaragua, hereby declare that the limitation laid down in the paragraph added by the Congress of the Republic to Article VIII* of the said Treaty applies to grants of land to the west of the meridian of 84° 30′ of longitude throughout the whole extent of the territory hitherto occupied or claimed by the Mosquito Indians within the frontier of the Republic, but not to grants in any part of the said territory to the east of that meridian line.

In witness whereof the undersigned have signed the present declaration, and have affixed thereto their respective seals.

Done at London, the 2d day of August, in the year of our Lord 1860.

[L. S.] J. RUSSELL.
[L. S.] J. DE MARCOLETA.

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* Page 153.

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62.—*President Buchanan's message to Congress December 3, 1860.*

[Extract.]

The discordant constructions of the Clayton and Bulwer treaty between the two governments, which, at different periods of the discussion, bore a threatening aspect, have resulted in a final settlement entirely satisfactory to this government.

In my last annual message I informed Congress that the British Government had not then

> Completed treaty arrangements with the Republics of Honduras and Nicaragua in pursuance of the understanding between the two governments. It is, nevertheless, confidently expected that this good work will ere long be accomplished.

This confident expectation has since been fulfilled. Her Britannic Majesty concluded a treaty with Honduras on the 28th November, 1859, and with Nicaragua on the 28th August, 1860, relinquishing the Mosquito protectorate. Besides, by the former the Bay Islands are recognized as a part of the Republic of Honduras. It may be observed that the stipulations of these treaties conform in every important particular to the amendments adopted by the Senate of the United States to the treaty concluded at London on the 17th October, 1856, between the two governments. It will be recollected that this treaty was rejected by the British Government because of its objection to the just and important amendment of the Senate to the article relating to Ruatan and the other islands in the Bay of Honduras.

63.—*Mr. Seward to Mr. Adams.*

No. 1745.] DEPARTMENT OF STATE,
Washington, April 25, 1866.

SIR: Towards the close of Mr. Polk's administration the British Government, disturbed, perhaps, by the recent acquisition of territory by the United States on the Pacific, showed what we thought to be a disposition to contend with the governments of the Central American states, with the ultimate object, as was supposed, of acquiring dominion there, and also a control of any ship-canal which might be made between the two oceans by the way of the San Juan River and Lake Nicaragua. British subjects had long before that time lent those governments money, the interest on which was in arrears, chiefly in consequence of the strife between the states which ensued upon their separation and as a confederacy.

War measures were determined upon to recover this interest; among others, the seizure of the island of Tiger, belonging to Honduras, in the Bay of Fonseca, was made by a British naval force in October, 1849. This seizure was protested against by Mr. Squier, the United States chargé d'affaires in Nicaragua, and a disavowal of the proceedings by the British Government was required by Mr. Clayton in an instruction to Mr. Abbott Lawrence, at London, of the 29th of December, 1849.

Insomuch as one route (by some supposed the best route) for the ship-canal from the lake to the Pacific lay along the Estero Real, which empties into the Bay of Fonseca, near Tiger Island, Mr. Squier deemed himself warranted in incorporating in a general commercial treaty with

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Honduras, which he signed on the 28th of September, 1849, provisions for acquiring land for naval stations on that island or on the continent in its vicinity. By what is called a protocol, of the same date, Honduras ceded Tiger Island to the United States, pending the ratification or rejection of the general treaty, provided that the time should exceed eighteen months.

These stipulations were entered into by Mr. Squier without instructions from the Department, and when the treaty and additional articles were received, he was reproved for them. They were never laid before the Senate. It is not to be doubted, however, that they occasioned uneasiness to the British Government, and in a great degree led to the Clayton-Bulwer treaty of the 19th of April, 1850.

The preamble of that treaty states that its object was to fix the views and intentions of the parties in regard to the ship canal.

The first article of the treaty, still referring to the ship-canal, stipulates that neither party will erect fortifications commanding the same, or in the vicinity thereof, or occupy, or fortify, or colonize, or assume or exercise dominion in any part of Central America.

It seems obvious that the renunciation by the parties to this instrument of a right to acquire dominion in Central America was intended to prevent either of them from obtaining control over the proposed ship-canal. At the time the treaty was concluded there was every prospect that that work would not only soon be begun, but that it would be carried to a successful conclusion. For reasons, however, which it is not necessary to specify, it never was even commenced, and at present there does not appear to be a likelihood of its being undertaken. It may be a question, therefore, supposing that the canal should never be begun, whether the renunciatory clauses of the treaty are to have perpetual operation.

Technically speaking, this question might be decided in the negative. Still, so long as it should remain a question, it would not comport with good faith for either party to do anything which might be deemed contrary to even the spirit of the treaty.

It is becoming more and more certain every day that not only naval warfare in the future, but also all navigation of war vessels in time of peace must be by steam. This necessity will occasion little or no inconvenience to the principal maritime powers of Europe, and especially to Great Britain, as those powers have possessions in various parts of the globe where they can have stores of coal and provisions for the use of their vessels. We are differently situated. We have no possession beyond the limits of the United States. Foreign colonization has never been favored by statesmen in this country either on general grounds or as in harmony with our peculiar condition. There is no change or likely to be any in this respect. It is indispensable for us, however, to have coaling stations under our own flag for naval observation and police, and for defensive war as well as for the protection of our widely spread commerce when we are at peace ourselves. This want, even for our commercial marine, is nowhere more sensibly felt than on the track between Panama and San Francisco. The question then occurs what points beyond our jurisdiction would be most eligible for this purpose?

Whatever opinion might be entertained in regard to any other sites, there would be no question that Tiger Island would be exceedingly desirable for that purpose.

Under these circumstances, you will sound Lord Clarendon as to the disposition of his government to favor us in acquiring coaling stations in Central America, notwithstanding the stipulation contained in the

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Clayton-Bulwer treaty. In doing this, however, you will use general terms only, and will by no means allow it to be supposed that we particularly covet Tiger Island. You will execute this instruction at such time and in such way as to you may seem best, and inform the Department of the result, so that the United States minister to Honduras may be directed to proceed accordingly.

It is supposed that you may probably be able to introduce the subject to the Earl of Clarendon's attention by suggesting that a negotiation with a view to the special end mentioned might be made an element in a general negotiation for settlement of the northwest-boundary question and of the conflicting claims of the two countries which have arisen during the late rebellion in the United States.

I am, &c.,

WILLIAM H. SEWARD.

64.—*Extract from the report of Mr. Fish, Secretary of State, accompanying President Grant's message to the Senate of July 14, 1870.*

DEPARTMENT OF STATE,
Washington, July 14, 1870.

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The avoidance of entangling alliances, the characteristic feature of the foreign policy of Washington, sprang from this condition of things. But the entangling alliances which then existed were engagements made with France as a part of the general contract under which aid was furnished to us for the achievement of our independence. France was willing to waive the letter of the obligation as to her West India possessions, but demanded, in its stead, privileges in our ports which the administration was unwilling to concede. To make its refusal acceptable to a public which sympathized with France, the cabinet of General Washington exaggerated the principle into a theory tending to national isolation.

The public measures designed to maintain unimpaired the domestic sovereignty and the international neutrality of the United States were independent of this policy, though apparently incidental to it. The muncipal laws enacted by Congress then and since have been but declarations of the law of nations. They are essential to the preservation of our national dignity and honor; they have for their object to repress and punish all enterprises of private war, one of the last relics of mediæval barbarism; and they have descended to us from the fathers of the republic, supported and enforced by every succeeding President of the United States.

The foreign policy of these early days was not a narrow one. During this period we secured the evacuation by Great Britain of the country wrongfully occupied by her on the lake; we acquired Louisiana; we measured forces on the sea with France, and on the land and sea with England; we set the example of resisting and chastising the piracies of the Barbary States; we initiated in negotiations with Prussia the long line of treaties for the liberalization of war and the promotion of international intercourse; and we steadily demanded, and at length obtained, indemnification from various governments for the losses we had suffered by foreign spoliations in the wars of Europe.

To this point in our foreign policy we had arrived when the revolu-

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tionary movements in Spanish and Portuguese America compelled a modification of our relations with Europe, in consequence of the rise of new and independent states in America.

The revolution, which commenced in 1810 and extended through all the Spanish-American continental colonies, after vain efforts of repression on the part of Spain, protracted through twenty years, terminated in the establishment of the independent states of Mexico, Guatemala, San Salvador, Honduras, Nicaragua, Costa Rica, Venezuela, Colombia, Ecuador, Peru, Chili, Bolivia, the Argentine Republic, Uruguay, and Paraguay, to which the Empire of Brazil came in time to be added. These events necessarily enlarged the sphere of action of the United States, and essentially modified our relations with Europe, and our attitude to the rest of this continent.

The new states were, like ourselves, revolted colonies. They continued the precedent we had set, of separating from Europe. Their assumption of independence was stimulated by our example. They professedly imitated us, and copied our national Constitution, sometimes even to their inconvenience.

The Spanish-American colonies had not the same preparation for independence that we had. Each of the British colonies possessed complete local autonomy. Its formal transition from dependence to independence consisted chiefly in expelling the British governor of the colony, and electing a governor of the State, from which to the organized Union was but a step. All these conditions of success were wanting in Spanish America, and hence many of the difficulties in their career as independent states; and further, while the revolution in British America was the exclusive result of the march of opinion in the British colonies, the simultaneous action of the separate Spanish colonies, though showing a desire for independence, was principally produced by the accident of the invasion of Spain by France.

The formation of these new sovereignties in America was important to us, not only because of the cessation of colonial monopolies to that extent, but because of the geographical relations to us, held by so many new nations, all, like ourselves, created from European stock, and interested in excluding European politics, dynastic questions, and balances of power from further influence in the New World.

Thus the United States were forced into new lines of action, which, though apparently in some respects conflicting, were really in harmony with the line marked out by Washington. The avoidance of entangling political alliances, and the maintenance of our own independent neutrality became doubly important from the fact that they became applicable to the new republics as well as to the mother country. The duty of non-interference had been admitted by every President. The question came up in the time of the first Adams, on the occasion of the enlistment projects of Miranda. It appeared again under Jefferson (anterior to the revolt of the Spanish colonies) in the schemes of Aaron Burr. It was an ever-present question in the administrations of Madisons, Monroe, and the younger Adams, in reference to the questions of foreign enlistment or equipment in the United States, and when these new republics entered the family of nations, many of them very feeble, and all too much subject to internal revolution and civil war, a strict adherence to our previous policy and a strict enforcement of our laws became essential to the preservation of friendly relations with them; for, since that time, it has been one of the principal cares of those intrusted with the administration of the government, to prevent piratical expeditions against these sister republics from leaving our ports. And thus the

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changed condition of the New World made no change in the traditional and peaceful policy of the United States in this respect.

In one respect, however, the advent of these new states in America did compel an apparent change of foreign policy on our part. It devolved upon us the determination of the great international question, at what time, and under what circumstances, to recognize a new power as entitled to a place among the family of nations. There was but little of precedent to guide us, except our own case. Something, indeed, could be inferred from the historical origin of the Netherlands and Switzerland. But our own case, carefully and conscientiously considered, was sufficient to guide us to right conclusions. We maintained our position of international friendship and of treaty obligations toward Spain, but we did not consider that we were bound to wait for its recognition of the new republics before admitting them into treaty relations with us as sovereign States. We held that it was for us to judge whether or not they had attained to the condition of actual independence, and the consequent right of recognition by us. We considered this question of fact deliberately and coolly. We sent commissioners to Spanish America to ascertain and report for our information concerning their actual circumstances, and in the fullness of time we acknowledged their independence; we exchanged diplomatic ministers, and made treaties of amity with them, the earliest of which, negotiated by Mr. John Quincy Adams, served as the model for the subsequent treaties with the Spanish-American republics. We also, simultaneously therewith, exerted our good offices with Spain, to induce her to submit to the inevitable result, and herself to accept and acknowledge the independence of her late colonies. We endeavored to induce Russia to join us in these representations. In all this our action was positive, in the direction of promoting the complete political separation of America from Europe.

A vast field was thus opened to the statesmen of the United States for the peaceful introduction, the spread, and the permanent establishment of the American ideas of republican government, of modification of the laws of war, of liberalization of commerce, of religious freedom and toleration, and of the emancipation of the New World from the dynastic and balance of power controversies of Europe.

Mr. John Quincy Adams, beyond any other statesman of the time in this country, had the knowledge and experience, both European and American, the comprehension of thought and purpose, and the moral convictions which peculiarly fitted him to introduce our country into this new field, and to lay the foundation of an American policy. The declaration known as the Monroe doctrine, and the objects and purposes of the congress of Panama, both supposed to have been largely inspired by Mr. Adams, have influenced public events from that day to this, as a principle of government for this continent and its adjacent islands.

It was at the period of the congress of Aix-la-Chapelle and of Laybach, when the "holy alliance" was combined to arrest all political changes in Europe in the sense of liberty, when they were intervening in Southern Europe for the re-establishment of absolutism, and when they were meditating interference to check the progress of free government in America, that Mr. Monroe, in his annual message of December, 1823, declared that the United States would consider any attempt to extend the European system to any portion of this hemisphere as dangerous to our peace and safety. "With the existing colonies or dependencies of any European power" he said, "we have not interfered and

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shall not interfere. But with the governments who have declared their independence, and maintained it, and whose independence we have on great consideration and on just principles acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling, in any other manner, their destiny, by any European power, in any other light than as the manifestation of an unfriendly feeling towards the United States."

This declaration resolved the solution of the immediate question of the independence of the Spanish-American colonies, and is supposed to have exercised some influence upon the course of the British cabinet in regard to the absolutist schemes in Europe as well as in America.

It has also exercised a permanent influence on this continent. It was at once invoked in consequence of the supposed peril of Cuba on the side of Europe; it was applied to a similar danger threatening Yucatan; it was embodied in the treaty of the United States and Great Britain as to Central America; it produced the successful opposition of the United States to the attempt of Great Britain to exercise dominion in Nicaragua under the cover of the Mosquito Indians; and it operated in like manner to prevent the establishment of a European dynasty in Mexico.

The United States stand solemnly committed by repeated declarations and repeated acts to this doctrine, and its application to the affairs of this continent. In his message to the two houses of Congress at the commencement of the present session, the President, following the teachings of all our history, said that the existing "dependencies are no longer regarded as subject to transfer from one European power to another. When the present relation of colonies ceases, they are to become independent powers, exercising the right of choice and of self-control in the determination of their future condition and relations with other powers."

This policy is not a policy of aggression; but it opposes the creation of European dominion on American soil, or its transfer to other European powers, and it looks hopefully to the time when, by the voluntary departure of European governments from this continent and the adjacent islands, America shall be wholly American.

It does not contemplate forcible intervention in any legitimate contest; but it protests against permitting such a contest to result in the increase of European power or influence; and it ever impels this government, as in the late contest between the South American republics and Spain, to interpose its good offices to secure an honorable peace.

The congress of Panama was planned by Bolivar to secure the union of Spanish America against Spain. It had originally military as well as political purposes. In the military objects the United States could take no part; and indeed the necessity for such objects ceased when the full effects of Mr. Monroe's declarations were felt. But the pacific objects of the Congress, the establishment of close and cordial relations of amity, the creation of commercial intercourse, of interchange of political thought, and of habits of good understanding between the new republics and the United States and their respective citizens, might perhaps have been attained, had the administration of that day received the united support of the country. Unhappily they were lost; the new states were removed from the sympathetic and protecting influence of our example, and their commerce, which we might then have secured, passed into other hands, unfriendly to the United States.

In looking back upon the Panama congress from this length of time, it is easy to understand why the earnest and patriotic men who endeavored to crystallize an American system for this continent failed.

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Mr. Clay and Mr. Adams were far-sighted statesmen, but unfortunately they struck against the rock of African slavery. One of the questions proposed for discussion in the conference was "The consideration of the means to be adopted for the entire abolition of the African slave trade," to which proposition the committee of the United States Senate of that day replied, "The United States have not certainly the right, and ought never to feel the inclination, to dictate to others who may differ with them upon this subject, nor do the committee see the expediency of insulting other states, with whom we are maintaining relations of perfect amity, by ascending the moral chair, and proclaiming from thence mere abstract principles, of the rectitude of which each nation enjoys the perfect right of deciding for itself." The same committee also alluded to the possibility that the condition of the islands of Cuba and Porto Rico, still the possessions of Spain, and still slaveholding, might be made the subject of discussion and of contemplated action by the Panama congress. "If ever the United States [they said] permit themselves to be associated with these nations in any general congress assembled for the discussion of common plans in any way affecting European interests, they will, by such act, not only deprive themselves of the ability they now possess of rendering useful assistance to the other American states, but also produce other effects prejudicial to their own interests."

Thus the necessity at that day of preserving the great interest of the Southern States in African slavery, and of preventing a change in the character of labor in the islands of Cuba and Porto Rico, lost to the United States the opportunity of giving a permanent direction to the political and commercial connections of the newly enfranchised Spanish-American states, and their trade passed into hands unfriendly to the United States, and has remained there ever since.

Events, subsequent to that date, have tended to place us in a position to retrieve our mistakes; among which events may be particularly named the suppression of the rebellion, the manifestation of our undeveloped and unexpected military power, the retirement of the French from Mexico, and the abolition of slavery in the United States.

There is good reason to believe that the latter fact has had an important influence in our favor in Spanish America. It has caused us to be regarded there with more sympathetic as well as more respectful consideration. It has relieved those republics from the fear of filibusterism which had been formerly incited against Central America and Mexico in the interest of slave extension; and it has produced an impression of the stability of our institutions and of our public strength sufficient to dissipate the fears of our friends or the hopes of those who wish us ill.

Thus there exists in the Spanish-American republics confidence oward the United States. On our side they find a feeling of cordiall amity and friendship, and a desire to cultivate and develop our common interests on this continent. With some of these states our relations are more intimate than with others, either by reason of closer similarity of constitutional forms, of greater commercial intercourse, of proximity in fact, or of the construction or contemplated construction of lines of transit for our trade and commerce between the Atlantic and the Pacific. With several of them we have peculiar treaty relations. The treaty of 1846 between the United States and New Grenada contains stipulations of guaranty for the neutrality of that part of the Isthmus within the present territory of Colombia, and for the protection of the rights of sovereignty and property therein belonging to Colombia. Similar stip-

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ulations appear in the treaty of 1867 with Nicaragua, and of July, 1864, with Honduras. Those treaties (like the treaty of alliance made with France in 1778 by Dr. Franklin, Silas Deane, and Arthur Lee) constitute *pro tanto* a true protective alliance between the United States and each of those republics. Provisions of like effect appear in the treaty of April 19, 1850, between Great Britain and the United States.

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65.—*Mr. Fish to General Schenck.*

No. 375.] DEPARTMENT OF STATE,
Washington, April 26, 1873.

SIR: You are aware that a main object of the Clayton-Bulwer treaty, so called, of the 19th of April, 1850, was to provide against obstruction by either party to a ship-canal to the Pacific through Nicaragua. A work of that kind was then deemed specially necessary and desirable for us, as California had recently been acquired, the only practicable way to which was across the Isthmus of Panama, or around Cape Horn. For some time previously to date of that instrument, and especially during the considerable period when the United States were without a diplomatic representative in Central America, it seemed to be the policy of the British Government to avail itself of what was called its protectorate of the King of Mosquitos to wrest from Nicaragua that part of its territory claimed on behalf of that Indian chief, including, of course, the mouths of the San Juan River, by the way of which it was supposed the proposed ship-canal must pass. The Clayton-Bulwer treaty effectually checked this pretension. It also, in terms, forbade either party to occupy or fortify in any part of Central America. The British Government, probably actuated by an apprehension that this stipulation might be construed against their claims at Belize, Honduras, instructed Sir H. L. Bulwer to make the declaration of 29th of June, 1850, when the ratifications were to be exchanged, to the effect that they did not understand the engagements of the convention to apply to Belize and its dependencies. In a note to Sir Henry of the 4th of July, 1850, Mr. Clayton acknowledged that it was not the purpose of the convention to apply to Belize and its dependencies.

A similar acknowledgment is contained in a memorandum of the 5th of July, 1850, signed by Mr. Clayton, which says that he at the same time declined to affirm or deny the British title in their settlement or its alleged dependencies. Among the latter what are called the Bay Islands were claimed to belong. The British Government, however, having converted them into a separate colony, this and the continuance of its protectorate, so called, over the Mosquito Indians, were regarded as virtually such breaches of the Clayton-Bulwer treaty as to call for the remonstrances which Mr. Buchanan, and subsequently Mr. Dallas, were instructed to address, and which they did address, to that government. The answer of that government was in substance that the Clayton-Bulwer treaty was merely designed to provide for the future, and was not intended to affect any rights or claims which Great Britain may have had in Central America at the time of its conclusion. This pretension was effectually answered by Mr. Buchanan in his reply to Lord Clarendon's memorandum on the subject, which you will find on the file or record of your legation. Ultimately, on the 17th of October, 1856, a treaty which is called the Dallas-Clarendon treaty was signed at London. The object of this instrument was to compose the differences between the two

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governments, especially in regard to the Bay Islands and the Mosquito protectorate. When the treaty reached here it must have been obvious to the Executive, that if it accomplished either of those purposes, it was in an incomplete and unacceptable way. Still the treaty was laid before the Senate, which body, though it did not absolutely reject it, appended to it so many and such important amendments that they were not accepted by the British Government, and the whole business proved abortive.

The British Government then sought negotiations with Nicaragua, Guatemala, and Honduras, separately, to attain the principal objects which it hoped to compass by means of the Dallas-Clarendon treaty, if it had gone into effect as it was signed.

The purposes of that government were in the main accomplished. On the 28th of January, 1860, a treaty between Great Britain and Nicaragua was signed at Managua. Though this instrument restored to that republic the nominal sovereignty over that part of its territory which had previously been claimed as belonging to the kingdom of the Mosquitos, it assigned boundaries to the Mosquito Reservation probably beyond the limits which any member of that tribe had ever seen, even when in chase of wild animals. Worst of all, however, it confirmed the grants of land previously made in Mosquito territory. The similar stipulation on this subject in the Dallas-Clarendon treaty was perhaps the most objectionable of any, as it violated the cardinal rule of all European colonists in America, including Great Britain herself, that the aborigines had no title to the soil which they could confer upon individuals.

This rule has repeatedly been confirmed by judicial decisions, and especially by the Supreme Court of the United States. It is supposed to be superfluous to add that it is understood the grantees of the Mosquito chief, respecting whose interests the British Government was so solicitous, were the subjects of the latter.

It is supposed that the expedition of Walker to Nicaragua made such an unfavorable impression on public opinion there, in respect to this country, as to prepare the way for the treaty with Great Britain. A rumor was current in that quarter, and was by many believed to be true, that Walker was an agent of this government, which, it was supposed, had covertly sent him thither to obtain control of the country. This, however, was so far from the truth that everything within its power was done by this government towards preventing the departure of Walker.

Besides the treaty with Nicaragua, just adverted to, there was a treaty between Great Britain and Honduras, signed on the 28th November, 1859, the main object of which was the restitution to the latter of the Bay Islands, which had for some time before been converted into a British colony.

This treaty also contained stipulations in regard to Mosquito Indians in Honduras territory similar to that in the treaty with Nicaragua.

On the 30th of April, 1859, a treaty between Great Britain and Guatemala was also signed, by which the boundaries of the British settlement at Belize, so called, were extended to the Sarstoon River. This instrument contained provisions for the appointment of commissioners to mark the boundaries, and for the construction of a road from Guatemala to the fittest place on the Atlantic coast near Belize. By a supplementary convention between the parties, of the 5th of August, 1863, Great Britain agreed, upon certain conditions, to contribute fifty thousand pounds sterling towards the construction of the road referred to.

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From the note of the 4th of December last, addressed to this department by M. Dardon, the minister of Guatemala here, it appears that when the joint commission for running the boundary line reached the Sarstoon River the British commissioner, finding that his countrymen were trespassing beyond that limit, refused to proceed, and the stipulation on the subject, if not virtually canceled, has, at least, been suspended.

The supplementary convention not having been ratified by Guatemala in season, it is stated that the British Government has notified that of Guatemala that it would regard the stipulation on the subject of the road contained in the treaty of 1859 as at an end.

Other important information on these subjects is contained in the letter and its accompaniments of Mr. Henry Savage, to this department of the 16th of October last. He is a native of this country and at one time was consul at Guatemala.

He has frequently, in the absence of a diplomatic agent of the United States in that quarter, furnished this department with valuable information in regard to Central American affairs.

Mr. Dardon says that his government also regards its treaty of 1859 with Great Britain at an end, and requests on its behalf the co-operation and support of this government towards preventing further encroachments by British subjects on the territory of Guatemala. It is believed that if such encroachments are authorized or countenanced by that government it will be tantamount to a breach of its engagement not to occupy any part of Central America. Before, however, officially mentioning the subject to Earl Granville, it would be advisable to ascertain the correctness of the representation of Mr. Dardon, as to the cause of the discontinuance of the demarkation of the boundary.

If the statement of that gentleman should prove to be correct, you will then formally remonstrate against any trespass by British subjects, with the connivance of their government, upon the territory of Guatemala, as an infringement of the Clayton-Bulwer treaty which will be very unacceptable in this country.

I am, &c.,

HAMILTON FISH.

66.—*Message of President Hayes to Congress, March 8, 1880.*

[Extract.]

The policy of this country is a canal under American control. The United States cannot consent to the surrender of this control to any European power, or to any combination of European powers. If existing treaties between the United States and other nations, or if the rights of sovereignty or property of other nations stand in the way of this policy—a contingency which is not apprehended—suitable steps should be taken by just and liberal negotiations to promote and establish the American policy on this subject, consistently with the rights of the nations to be affected by it.

The capital invested by corporations or citizens of other countries in such an enterprise must, in a great degree, look for protection to one or more of the great powers of the world. No European power can intervene for such protection, without adopting measures on this continent which the United States would deem wholly inadmissible. If the protection of the United States is relied upon, the United States must ex-

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ercise such control as will enable this country to protect its national interests and maintain the rights of those whose private capital is embarked in the work.

An interoceanic canal across the American Isthmus will essentially change the geographical relations between the Atlantic and Pacific coasts of the United States, and between the United States and the rest of the world. It will be the great ocean thoroughfare between our Atlantic and our Pacific shores, and virtually a part of the coast line of the United States. Our merely commercial interest in it is greater than that of all other countries, while its relations to our power and prosperity as a nation, to our means of defense, our unity, peace, and safety, are matters of paramount concern to the people of the United States. No other great power would, under similar circumstances, fail to assert a rightful control over a work so closely and vitally affecting its interest and welfare.

Without urging further the grounds of my opinion, I repeat, in conclusion, that it is the right and the duty of the United States to assert and maintain such supervision and authority over any interoceanic canal across the isthmus that connects North and South America as will protect our national interests. This I am quite sure will be found not only compatible with, but promotive of, the widest and most permanent advantage to commerce and civilization.

67.—*Extract from the report of Mr. Evarts, Secretary of State, accompanying President Hayes's message (No. 66) and the Wyse concession for the Panama Canal, which it inclosed.*

The recent contract or concession made by the Government of Colombia with an association of foreign projectors, the text of which is herewith annexed (inclosure No. 5), brings to attention some considerations of more or less practical importance, according as we may estimate the feasibility of the project and the financial prospects of the projectors. It does, however, present an occasion for a deliberate indication by the Government of the United States of its relations to enterprises of this nature, both in its position as an American power, and under its specific treaty rights and obligations towards the United States of Colombia.

In the mere aspect of a contribution of capital, in the motive of profit to the investors, on the one part, and of a proprietary administration by Colombia of the transit through its territory as a source of legitimate revenue and local prosperity, the proposed canal might seem to fall within the ordinary conditions of pecuniary enterprise and internal development, which the general interests of commerce favor, and which it has been the policy of this government to stimulate and assist.

But this view of the subject is quite too narrow and too superficial. It overlooks the direct relations of the other American nations to the contemplated change in the route of water-borne commerce, and the indirect but equally weighty considerations by which the relations of the American nations to the great powers of Europe will be modified by this change. It does not penetrate the formal character of the contract as between private capital and local administration, and appreciate its real and far-reaching operation upon the commercial and political interests of the American continent.

The United States, therefore, as the great commercial and political power of America, becomes, necessarily, a principal party to any project

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which shall exhibit such solidity and proportions as to distinguish it from the unsubstantial and illusory schemes which have, from time to time, proposed to solve the problem of interoceanic transit. The question involved presents itself distinctly to this government as a territorial one, in the administration of which, as such, it must exercise a potential control.

While this attitude of the United States to the political and commercial problem of an interoceanic canal, at whatever point, would seem to attach to their position on the continent, the particular rights and obligations in reference to any transit across the Isthmus of Panama, which grow out of the mutual engagements of the treaty with Colombia, fix more definitely the interests of this government in any material changes of that isthmus as the theater of these rights and obligations.

It is manifest that so stupendous a change from the natural configuration of this hemisphere as transforms the Isthmus of Panama from being a barrier between the Atlantic and Pacific Oceans into a gateway and thoroughfare between them for the navies and merchant ships of the world bears directly upon the weight and burden of our guarantees under that treaty. It is equally manifest, and only less important, that the organization and nationality of an immense capital and the administration of a great and growing force of managers and laborers, and the throng of population likely to attend the prosperity of the enterprise, affect essentially the conditions under which the United States may be called upon to perform the engagements of that treaty. The guarantee of the neutrality of the transit and of the sovereignty and property of Colombia in the isthmus are one thing while the isthmus remains in its natural and unpeopled state, and quite another when it shall have been opened to the interests, the cupidities, and the ambitions of the great commercial nations, and occupied by populations of foreign allegiance and discordant habits.

So obvious are these propositions that it may well be assumed that no contract or negotiations could ever be entered into between private projectors and the Government of Colombia except in contemplation of this position of the United States under the treaty, and of the necessity that both the private interests and the public engagements involved, in reliance upon the power and faith of this government for their protection, must be conformed to its rightful participation and control in any arrangements that may seriously affect the discharge of its stipulated responsibilities.

[Inclosure in No. 67.—Translation from the Diario Oficial of Bogota, Wednesday, May 22, 1878.]

Law 28th of 1878 (18th of May) "approving the contract for the construction of an interoceanic canal across Colombian territory."

The Congress of the United States of Colombia, after an examination of the contract, which is verbatim as follows:

CONTRACT FOR THE CONSTRUCTION OF AN INTEROCEANIC CANAL ACROSS COLOMBIAN TERRITORY.

Eustorgio Salgar, secretary of the interior and of foreign relations of the United States of Colombia, duly authorized, of the one part, and of the other part Lucien N. B. Wyse, chief of the Isthmus Scientific Surveying Expedition in 1876, 1877, and 1878, member and delegate of the board of directors of the International Interoceanic Canal Association, presided by General Etienne Türr, in conformity with powers bestowed at Paris, from the 27th to the 29th of October, 1877, have celebrated the following contract:

ARTICLE 1.* The Government of the United States of Colombia grants to Mr. Lucien

*This article modified by Colombian Congress. See decree which follows.

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N. B. Wyse, who accepts it in the name of the civil International Interoceanic Canal Association, represented by their board of directors, the exclusive privilege for the construction across its territory, and for the operating of a canal between the Atlantic and Pacific Oceans. Said canal may be constructed without restrictive stipulations of any kind.

This concession is made under the following conditions:

1st. The duration of the privilege shall be for ninety-nine years from the day on which the canal shall be wholly or partially opened to public service, or when the grantees or their representatives commence to collect the dues on transit and navigation.

2d. From the date of approbation by the Colombian Congress for the opening of the interoceanic canal, the government of the republic cannot construct, nor concede to any company or individual, under any consideration whatever, the right to construct another canal across Colombian territory which shall communicate the two oceans. Should the grantees wish to construct a railroad as an auxiliary to the canal, the government (with the exception of existing rights) cannot grant to any other company or individual, the right to build another interoceanic railroad, nor do so, itself, during the time allowed for the construction and use of the canal.

3d. The necessary studies of the ground, and the route for the line of the canal, shall be made, at the expense of the grantees, by an international commission of individuals and competent engineers, in which two Colombian engineers shall take part. The commission shall determine the general route of the canal and report to the Colombian Government directly, or to its diplomatic agents in the United States or Europe, upon the results obtained, at the latest in 1881, unless unavoidable circumstances, clearly proven, should prevent their so doing. The report shall comprise in duplicate the scientific labors performed, and an estimate of the projected work.

4th. The grantees shall then have a period of two years to organize a universal joint stock company, which shall take charge of the enterprise, and of the construction of the canal. This term shall commence from the date mentioned in the preceding paragraph.

5th. The canal shall be finished and placed at the public service within the subsequent twelve years after the formation of the company which will undertake its construction, but the executive power is authorized to grant a further maximum term of six years in the case of encountering superhuman obstacles beyond the power of the company, and if, after one-third of the canal is built, the company should acknowledge the impossibility of concluding the work in the said twelve years.

6th. The canal shall have the length, depth, and all other conditions requisite in order that sailing vessels and steamships measuring up to 140 meters long, 16 meters in width, and 8 meters in draught shall, with lowered topmasts, be able to pass the canal.

7th. All public lands which may be required for the route of the canal, the ports, stations, wharves, moorings, warehouses, and in general for the construction and service of the canal as well as for the railway, should it be convenient to build it, shall be ceded gratis to the grantees.

8th. These unoccupied public lands shall revert to the government of the republic, with the railroad and canal, at the termination of this privilege; there is also granted for the use of the canal a belt of land two hundred meters wide on each side of its banks throughout all the distance which it may run, but the owners of lands on its banks shall have free access to the canal and its ports as well as to the right of use of any roads which the grantees may open there; and this without paying any dues to the company.

9th. If the lands through which the canal shall pass, or upon which the railroad may be built, should, in whole or in part, be private property, the grantee shall have the right to demand their expropriation by the government according to all the legal formalities in such cases. The indemnity which shall be made to the land owners, and which shall be based on their actual value, shall be at the expense of the company. The grantees shall enjoy in this case, and in those of temporary occupation of private property, all the rights and privileges which the existing legislation confers.

10th. The grantees may establish and operate at their cost the telegraphic lines which they may consider useful as auxiliaries in the building and management of the canal.

ART. 2.* Within the term of twelve months after the international commission shall have presented the result of their definite surveys, the grantees will deposit in the bank or banks of London, which the national executive power may designate, the sum of seven hundred and fifty thousand francs as security for the accomplishment of the work. The receipt of said bank or banks shall be a voucher of the fulfillment of said engagement. The deposit shall be made in certificates of the foreign debt of Colombia, at the current market price on the day of delivery. It is understood that should the grantees forfeit this deposit by virtue of the provisions of clause 2, article 22, of

*This article modified by Colombian Congress. See decree which follows.

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this contract, the said sum with its interest shall become the sole property of the Colombian Government. On the conclusion of the canal the amount deposited as security shall remain to the credit of the treasury as indemnity to the national government for the expenses incurred in the erection of buildings for the use of public offices.

ART. 3.* Should the route of the canal from one ocean to the other pass to the west and to the north of the imaginary straight line which connects Cape Tiburon with Garachine Point, the grantees must make a friendly arrangement with the Panama Railroad Company, or pay an indemnity which shall be determined in accordance with the provisions of law 46, of August 16, 1867, "which approves the contract celebrated July 5, 1867, reformatory of that of April 15, 1850, for the construction of a railroad from ocean to ocean, across the Isthmus of Panama."

In case the international commission selects the Atrato, or some other stream now navigable, as one of the entrances of the canal, the canalized mouth shall be considered as one of the parts of the principal work, and maintained in equally good condition. River navigation in the upper part of the stream, so far as it has not for its object the use of the canal, shall be open to commerce, and free from all dues.

ART. 4.* In addition to the lands granted by paragraphs 7 and 8 of article 1, there are gratuitously given to the grantees, and at their choice five hundred thousand hectares of the unoccupied public lands, with the mines which they may contain. This allotment shall be made directly by the national executive power. The public lands situated on the sea-coast, or on the border of the canal, or at the rivers, shall be divided as closely as possible in alternate lots between the government and the company, forming, if the ground will permit, areas of one and two thousand hectares. The measurement for the allotment or location shall be made at the cost of the grantees, and with the intervention of commissioners of the government.

Unoccupied lands so granted, with the mines which they may hold, shall be awarded to the grantees as soon as they request them after the deposit of the security. In a belt of two myriameters on each side of the canal, and during five years after the conclusion of the work, the government cannot transfer other lands beyond the said lots until the company shall have obtained the whole of the lands which are granted to it gratuitously.

ART. 5.* The government of the republic declares neutral, for all time, the ports of each terminus of the canal and the waters of the latter from one sea to the other, and consequently in case of war between other nations or between one or more of these and Colombia, the transit of the canal shall not be interrupted on that account, and the merchant vessels and individuals of all nations of the world may enter said ports, and navigate the canal without let or hinderance. In general any ship whatever may navigate the canal freely without discrimination, exclusion, or preference of persons or nationalities, by paying the dues and abiding by the regulations laid down by the company for the use of said canal and its dependencies. Exception is made of foreign troops, which cannot pass without permission from Congress.

ART. 6.* The entrance to the canal shall be rigorously prohibited to the war vessels of those nations which are at war with another or others, and whose destination manifests their intention to take part in hostilities.

ART. 7. The grantees will enjoy the right during the whole time of the privilege to use the ports at the termini of the canal, as well as intermediate points, for the anchorage and repair of ships, and the loading, depositing, transshipping, or landing of merchandise. The ports of the canal shall be open and free to the commerce of all nations, and no import duties shall be exacted except on merchandise destined to be introduced for the consumption of the rest of the republic. The said ports shall, therefore, be open to importations from the commencement of the work, and the custom-houses, and the revenue service which the government may deem convenient for the collection of duties on merchandise destined for other portions of the republic, shall be established, in order to prevent introduction of smuggled goods.

ART. 8.* The executive power shall issue the necessary regulations for the protection of its revenues by preventing smuggling, and shall appoint the number of men necessary for this service at its own expense. Of the employés indispensable for this, ten shall be paid by the company, and their salaries shall not exceed those paid to officials of the same grade in the custom-house at Barranquilla. When necessary, the company shall transport, free of charge, by the canal or by the auxiliary railroad, the men at the service of the union or destined for police duty, with the object of guarding public service without, or preserving public order within. If the company should not own ships or tugs, they shall pay the passage of these men across the isthmus. The sustenance of the public force necessary for the security of the interoceanic transit shall also be at the expense of the company.

ART. 9. The grantees shall have the right to introduce, free of import or other duties of whatever class, all the instruments, machinery, tools, fixtures, provisions, clothing for laborers, which they may need during all the time allowed to them for the com-

*This article modified by Colombian Congress. See decree which follows.

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struction and use of the canal. The ships carrying cargoes for the use of the enterprise shall enjoy free entry to whatever points shall affords them easy access to the line of the canal.

ART. 10. No taxes, either national, municipal, of the State, or of any other class, shall be levied upon the canal, the ships that navigate it, the tugs and vessels at the service of the grantees, their warehouses, work-shops, and offices, factories of whatever class, storehouses, wharves, machinery, or other works or property of whatever character belonging to them, and which they may need for the service of the canal and its dependencies, during the time conceded for its construction and operation. The grantees shall also have the right to take from unoccupied lands the materials of any kind which they may require without paying any compensation for the same.

ART. 11. The passengers, money, precious metals, merchandise, and articles and effects of all kinds which may be transported over the canal, shall also be exempt from all duties, national, municipal, transit and others. The same exemption is extended to all articles and merchandise for interior or exterior commerce which may remain in deposit, according to the conditions which may be stipulated, with the company in the storehouses and stations belonging to them.

ART. 12. Ships desiring to cross the canal shall present at the port of the terminus of the canal at which they may arrive, their respective registers and other sailing papers, prescribed by the laws and public treaties, so that the vessels may navigate without interruption. Vessels not having said papers, or which should refuse to present them, may be detained and proceeded against according to law.

ART. 13.* The government allows the immigration and free access to the lands and work-shops of the grantees of all employés and laborers, of whatever nationality, contracted for the enterprise, or who may come to engage themselves in the service of the canal, on condition that such employés or laborers submit to existing laws, and to the regulations established by the company. The government assures them aid and protection and the enjoyment of their rights and privileges, according to the constitution and laws of the nation, during the time they live in Colombian territory.

ART. 14.* As a compensation to the grantees for the expenses of the building, preservation and operation of the canal, which are for their account, they shall have the right during all the period of this privilege to charge and collect for passage over the canal, and the ports dependent upon it, dues for light-house, anchorage, transit, navigation, repairs, pilotage, towing, hauling, storage, and station, as per the tariff they may establish, and which may be modified at any time under the following express conditions:

1st. These dues shall be imposed without exception or favor upon all ships in identical conditions.

2d. The tariff shall be published four months before going into operation in the Diario Oficial of the government, as well as in the capitals and principal commercial ports of the countries affected thereby.

3d. The principal dues to be collected on vessels shall not exceed the rate of ten francs for each cubic meter, resulting from the multiplication of the principal dimensions of the submerged portion of the ship in transit (length, breadth, and draught).

4th. The principal dimensions of the ship in transit, that is to say, the greatest exterior length and beam of vessel, as well as the greatest draught of water, shall be nautical dimensions, inserted in the official clearance papers, with the exception of such modifications as may result in the course of the voyage. The captains of ships and agents of the company may require a new measurement to be taken, which operation shall be effected at the expense of the solicitor.

5th. The same measurement, that is to say, the parallelopiped described by the submerged part of the ship, shall serve as the basis for the determination of the other accessory charges.

6th. Special dues for navigation shall be reduced in proportion to the excess when the net profits derived therefrom shall exceed 12 per cent. of the capital employed in the enterprise.

ART. 15.* By way of compensation for the right and exemptions which are conferred upon the grantees by this contract, the government of the republic shall enjoy a participation equal to 5 per cent. of the gross earning which shall accrue to the enterprise, as per the tariff to be fixed by the company.

ART. 16. The grantees are authorized to require payment in advance of any charges which they may establish; nine-tenths of these charges shall be made payable in gold, and only the remaining one-tenth part shall be payable in silver of twenty-five grammes, of a fineness of 900.

ART. 17. The ships which shall infringe upon the rules established by the company shall be subject to the payment of a fine, which said company shall fix in its regulations, of which due notice shall be given to the public at the time of the issue of the tariff. Should they refuse to pay said fine, nor furnish sufficient security, they may

* This article modified by Colombian Congress. See decree which follows.

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be detained and prosecuted according to the laws. The same proceedings may be observed for the damages they may have caused.

ART. 18. If the opening of the canal shall be deemed financially possible, the grantees are authorized to form, under the immediate protection of the Colombian Government, a universal joint-stock company, which shall undertake the execution of the work, taking charge of all financial transactions which may be needed. As this enterprise is essentially international, and for public utility, it is understood that it shall always be kept free from political influences.

The company shall take the name of "The Universal Interoceanic Canal Association"; its residence shall be fixed in Bogota, New York, London, or Paris, as the grantees may choose; branch offices may be established wherever necessary. Its contracts, shares, bonds, and titles of its property shall never be subjected by the Government of Colombia to any charges for registry, emission, stamps, or any similar imposts upon the sale or transfer of these shares or bonds, as well as on the profits produced by these values.

ART. 19. The company is authorized to reserve as much as 10 per cent. of the shares emitted, to form a fund of shares, to the benefit of the founders and promoters of the enterprise. Of the products of the concern, the company take, in the first place, what is necessary to cover all expenses of repairs, operations, and administration, and the share which belongs to the government, as well as the sums necessary for the payment of the interest and the amortization of the bonds, and, if possible the fixed interest or dividend of the shares; that which remains will be considered as net profit, out of which 80 per cent. at least will be divided among the shareholders.

ART. 20.* The Colombian Government, should it consider it important, may name a special commissioner in the board of directors of the company. This delegate shall enjoy all the advantages conceded to the other directors by the statutes of the company. The grantees are obliged to appoint in Bogota, near the national government, an agent duly authorized to resolve all doubts and to present all demands to which this contract may give rise. Reciprocally, and with the same intention, the government shall name a resident agent in the principal establishment of the company on the canal. In every case the difficulties which may arise between the contracting parties shall be submitted to a committee of arbitrators, composed of four individuals, two of whom shall be selected by the executive power from among the members of the federal supreme court, and the other two named by the company. In case of a tie in the votes of this committee, the same arbitrators shall name a fifth party. The decision pronounced by this tribunal shall be final.

ART. 21. The grantees, or those who in future may succeed them in their rights, may transfer those rights to other capitalists or financial companies, but it is absolutely prohibited to cede or mortgage them under any considerations whatever to any nation or foreign government.

ART. 22.* The grantees or their representatives shall forfeit their acquired rights in the following cases:

1st. If they do not deposit within the term stipulated the amount required as security for the execution of the work.

2d. If in the first of the twelve years allowed for the construction of the canal the work is not already begun. In this case the company shall forfeit the sum deposited as a guarantee, and which shall go to the benefit of the republic.

3d. If at the termination of the period fixed by paragraph fifth of article one, the canal is not navigable.

4th. If they do not comply with the provisions of article 21.

5th. If the service of the canal should be interrupted without some superhuman obstacle.

In cases 2, 3, 4, and 5, the federal supreme court shall decide whether the privilege has become null or not.

ART. 23.* In all cases of declaration of nullity, the public lands mentioned in paragraphs 7 and 8 of article 1, and those not alienated among those conceded in article 4, will return to the possession of the republic in the state in which they are found, and without any indemnity whatever, and also the buildings, materials, works, and improvements of which the grantees hold possession in the canal. These shall reserve only their capital, vessels, provisions, and, in general, their movable property.

ART. 24. Five years previous to the expiration of the ninety-nine years of the privilege, the executive power shall appoint a commissioner to examine the condition of the canal and annexes, and, with the knowledge of the company or its agents on the isthmus, to make an official report, describing in every detail the condition of the same and pointing out what repairs may be necessary. This report will serve to establish in what condition the canal and its dependencies shall be delivered to the national government on the day of expiration of the privilege now granted.

ART. 25. The enterprise of the canal is reputed to be of public utility.

ART. 26. This contract, which will serve as a substitute for the provisions of law 33,

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*This article modified by Colombian Government. See decree which follows.

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of May 26, 1876, and the clauses of the contract celebrated on the 28th of May of the same year, shall be submitted for the approval of the President of the union and the definite acceptance by the Congress of the nation.

In witness whereof they sign the present in Bogota, on the 20th March, 1878.

EUSTORGIO SALGAR.
LUCIEN N. B. WYSE.

BOGOTA, *March 23, 1878.*

Approved.
The President of the union:

AQUILEO PARRA.

The secretary of the interior and of foreign relations:

EUSTORGIO SALGAR.

DECREES.

The foregoing contract is hereby approved, with the following modifications:

Article 1, with the addition of the following paragraph:

§—It is, however, stipulated and agreed that if, before the payment of the security determined upon in article 2, the Colombian Government should receive any formal proposal, sufficiently guaranteed, in the opinion of the said government, to construct the canal in less time and under more advantageous conditions for the United States of Colombia, said proposal shall be communicated to the grantees or their representatives, that they may be substituted therein, in which case they shall be preferred; but if they do not accept said substitution, the Colombian Government, in the new contract which they may celebrate, shall exact, besides the guarantee mentioned in article 2, the sum of three hundred thousand dollars in coin, which shall be given as indemnity to the grantees.

Article 2, thus:

ART. 2. Within the term of twelve months from the date at which the international commission shall have presented the definite results of their studies, the grantees shall deposit in the bank or banks of London, to be desigated by the national executive power, the sum of seven hundred and fifty thousand francs, to the exclusion of all paper money, as security for the execution of the work. The receipt of said banks shall be a voucher for the fulfillment of said deposit. It is understood that if the grantees should lose that deposit by virtue of the stipulations contained in clauses 2 and 3 of article 22 of the present contract, the sum referred to, with interest accrued, shall become *in toto* the property of the Colombian Government. After the conclusion of the canal, said sum, without interest, which latter will in this case belong to the grantees, shall remain for the benefit of the treasury, for the outlays which it may have incurred or may incur in the construction of buildings for the service of the public officers.

Article 3, thus:

ART. 3. If the line of the canal to be constructed from sea to sea should pass to the west and to the north of the imaginary straight line which joins Cape Tiburon with Garachiné Point, the grantees must enter into some amicable arrangement with the Panama Railroad Company, or pay an indemnity, which shall be established in accordance with the provisions of law 46, of August 16, 1867, 'approving the contract celebrated on July 5, 1867, reformatory of the contract of April 15, 1850, for the construction of an iron railroad from one ocean to the other through the Isthmus of Panama.'

In case the international commissions should choose the Atrato or some other stream already navigable as one of the entrances to the canal, the ingress and egress by such stream, and the navigation of its waters, so long as it is not intended to cross the canal shall be open to commerce and free from all imposts.

Article 4, thus:

ART. 4. Besides the lands granted in paragraphs 7 and 8 of article 1, there shall be awarded to the grantees, as an aid for the accomplishment of the work, and not otherwise, five hundred thousand hectares of public lands, with the mines they may comprise, in the localities which the company may select. This award shall be made directly by the national executive power. The public lands situated on the sea-coast, on the borders of the canal or of the rivers, shall be divided into alternate lots between the government and the company, forming areas of from one to two thousand hectares. The measurements for the allotment or locating shall be made at the expense of the grantees, and with the intervention of government commissioners. The public lands thus granted, with the mines they may hold, shall be awarded to the grantees

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as fast as the work of construction of the canal progresses, and in accordance with rules to be laid down by the executive power.

Within a belt of two myriameters on each side of the canal, and during five years after the termination of the work, the government shall not have the right to grant other lands beyond the said lots until the company shall have called for the whole number of lots granted by this article.

Article 5, thus:

ART. 5. The government of the republic hereby declares the ports at each end of the canal, and the waters of the latter from sea to sea, to be neutral for all time; and consequently, in case of war among other nations, the transit through the canal shall not be interrupted by such event, and the merchant vessels and individuals of all nations of the world may enter into said ports and travel on the canal without being molested or detained. In general, any vessel may pass freely without any discrimination, exclusion, or preference of nationalities or persons, on payment of the dues, and the observance of the rules established by the company for the use of the canal and its dependencies. Exception is to be made of foreign troops, which shall not have the right to pass without permission from Congress, and of the vessels of nations which, being at war with the United States of Colombia, may not have obtained the right to pass through the canal at all times, by public treaties wherein is guaranteed the sovereignty of Colombia over the Isthmus of Panama and over the territory whereon the canal is to be cut, besides the immunity and neutrality of the said canal, its ports, bays, and dependencies, and the adjacent seas.

Article 6, thus:

ART. 6. The United States of Colombia reserves to themselves the right to pass their vessels, troops, ammunitions of war at all times and without paying any dues whatever. The passage of the canal is strictly closed to war vessels of nations at war with another or other nations, and which may not have acquired, by public treaty with the Colombian Governments, the right to pass by the canal at all times.

Article 8, thus:

ART. 8. The executive power shall dictate, for the protection of the financial interests of the republic, the regulations conducive to the prevention of smuggling, and shall have the power to station, at the cost of the nation, the number of men which they may deem necessary for that service.

Out of the indispensable officials for that service, ten shall be paid by the company, and their salaries shall not exceed those enjoyed by employés of the same rank in the Barranquilla custom-house.

The company shall carry gratis through the canal, or on the auxiliary railway, the men destined for the service of the nation, for the service of the state through whose territory the canal may pass, or for the service of the police, with the object of guarding against foreign enemies, or for the preservation of public order, and shall also transport gratis the baggage of such men, their war materials, armament, and clothing which they may need for the service assigned to them.

The subsistence of the public force which may be deemed necessary for the safety of the interoceanic transit shall likewise be at the expense of the company.

Article 13, thus:

ART. 13. The government allows the immigration and free access to the lands and shops of the grantees of all the employés and workingmen of whatever nationality, who may be contracted for the work, or who may come to engage themselves to work on the canal, on condition that such employés or laborers shall submit to the existing laws, and to the regulations established by the company. The government promises them support and protection, and the enjoyment of their rights and guarantees, in conformity with the national constitution and laws, during the time they may sojourn on Colombian territory.

The *national peons* and laborers employed on the work of the canal shall be exempt from all requisition of military service, national as well as of the state.

Article 14, thus:

ART. 14. In order to indemnify the *grantees* of the construction, maintenance, and working expenses incurred by them, they shall have, during the whole period of the privilege, the exclusive right to establish and collect for the passage of the canal and its ports, the dues for light-houses, anchorage, transit, navigation, repairs, pilotage, towage, hauling, stowage, and of station according to the tariff which they may issue, and which they may modify at any time under the following express conditions:

1st. They shall collect these dues, without any exceptional favor, from all vessels in like circumstances.

2d. The tariffs shall be published four months before their enforcement in the Diario Oficial of the government, as well as in the capitals and the principal commercial ports of the countries interested.

3d. The principal navigation dues to be collected shall not exceed the sum of ten francs for each cubic meter resulting from the multiplication of the principle dimensions of the submerged part of the ship in transit (length, breadth, and draught).

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4th. The principal dimensions of the ship in transit, that is to say, the maximum exterior length and breadth at the water-line, as well as the greatest draught, shall be the metrical dimension inserted in the official clearance papers, excepting any modifications supervening during the voyage. The ships' captains and the company's agents may demand a new measurement, which operations shall be carried out at the expense of the petitioner; and

5th. The same measurement, that is to say, the number of cubic meters contained in the parallelopipedon circumscribing the submerged part of the ship, shall serve as a basis for the determination of the other accessory dues.

Article 15, thus:

ART. 15. By way of compensation for the rights and exemptions which are allowed to the grantees in this contract, the government of the republic shall be entitled to a share amounting to five per cent. on all collections made by the company, by virtue of the dues which may be imposed in conformity with Article 14, during the first twenty-five years after the opening of the canal to the public service. From the twenty-sixth up to the fiftieth year, inclusive, it shall be entitled to a share of (6%) six per cent; from the fifty-first to the seventy-fifth to seven per cent; and from the seventy-sixth to the termination of the privilege to eight per cent. It is understood that these shares shall be reckoned, as has been said, on the gross income from all sources, without any deductions whatever for expenses, interest on shares, or on loans or debts against the company. The government of the republic shall have the right to appoint a commissioner or agent, who shall intervene in the collections and examine the accounts, and the distribution or payment of the shares coming to the government shall be made in due half-yearly installments. The product of the five, six, seven and eight per cent. shall be distributed as follows:

Four-fifths of it shall go to the government of the republic, and the remaining one-fifth to the government of the state through whose territory the canal may pass.

The company guarantees to the Government of Colombia that the share of the latter shall in no case be less than the sum of two hundred and fifty thousand dollars a year, which is the same as that received as its share in the earnings of the Panama Railroad, so that if in any year the five per cent. share should not reach said sum, it shall be completed out of the common funds of the company.

Article 20, thus:

ART. 20. The Colombian Government may appoint a special delegate in the board of directors of the company whenever it may consider it useful to do so. This delegate shall enjoy the same advantages as are granted to the other directors by the by-laws of the company.

The grantees pledge themselves to appoint in the capital of the union, near the national government, a duly-authorized agent for the purpose of clearing up all doubts and presenting any claims to which this contract may give rise. Reciprocally and in the same sense, the government shall appoint an agent, who shall reside in the principal establishment of the company situated on the line of the canal; and, according to the national constitution, the difficulties which may arise between the contracting parties shall be submitted to the decision of the federal supreme court.

Article 22, thus:

ART. 22. The grantees, or their representatives, shall lose the right hereby acquired in the following cases:

1st. If they do not deposit, on the terms agreed upon, the sum which by way of security must insure the execution of the work.

2d. If, in the first year of the twelve that are allowed for the construction of the canal, the works are not already commenced, in this case the company shall lose the sum deposited by way of security, together with the interest that may have accrued; all of which will remain for the benefit of the republic.

3d. If, at the end of the second period fixed in paragraph 5 of Article 1, the canal is not transitable, in this case also the company shall lose the sum deposited as security; which, with the interests accrued, shall remain for the benefit of the republic.

4th. If they violate the prescriptions of Article 21; and,

5th. If the service of the canal should be interrupted for a longer period than six months without its being occasioned by the acts of God, &c.

In cases 2, 3, 4, and 5, the federal supreme court shall have the right to decide whether the privilege has become annulled or not.

Article 23, thus:

ART. 23. In all cases of decisions of nullity, the public lands mentioned in clauses 7 and 8 of Article 1, and such lands as are not settled or inhabited from among those granted by Article 4, shall revert to the possession of the republic in the condition they may be found in, and without any indemnity whatever, as well as the buildings, materials, works, and improvements which the grantees may possess along the canal and its accessories. The grantees shall only retain their capital, vessels, provisions, and in general all movable property.

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Given at Bogota on the seventeenth day of May, eighteen hundred and seventy-eight.

The president of the senate of plenipotentiaries:

RAMON GOMEZ.

The president of the chamber of representatives:

BELISARIO ESPONDA.

The secretary of the senate of plenipotentiaries:

JULIO E. PEREZ.

The secretary of the chamber of representatives:

ENRIQUE GAONA.

BOGOTA, *May 18, 1878.*

Let it be published and enforced.

The President of the Union:

[SEAL.]

JULIAN TRUJILLO.

The secretary of the interior and foreign relations:

FRANCISCO J. ZALDUA.

Note from Mr. Lucien N. B. Wyse, wherein he declares he accepts all the modifications made by law 28 to the contract for the construction of the interoceanic canal.

To the honorable Secretary of the Interior and Foreign Relations:

I have the honor to inform you that I accept each and all of the modifications introduced by Congress to the contract which I celebrated with Señor Eustorgio Salgar, your worthy predecessor in the department of the interior and foreign relations, for the construction of the interoceanic canal, which contract was approved by the executive power under date of March 23 last.

The modifications to which I have alluded are those recorded in law No. 28 of the 18th instant.

I hasten to lay this declaration before the Governor of Colombia, so that it may be taken in consideration, in order that said law may be effective in all its parts.

BOGOTA, May 18, 1878.

LUCIEN N. B. WYSE,

Chief of the International Scientific Commission for the Survey of the Isthmus, Member and Delegate from the Board of Directors of the Interoceanic Canal Association.

68.—*Mr. Blaine to Mr. Lowell.*

No. 187.] DEPARTMENT OF STATE,
Washington, June 24, 1881.

SIR: It has fallen under the observation of the President, through the current statements of the European press and other usual channels of communication, that the great powers of Europe may possibly be considering the subject of jointly guaranteeing the neutrality of the interoceanic canal now projected across the Isthmus of Panama.

The United States recognizes a proper guarantee of neutrality as essential to the construction and successful operation of any highway across the Isthmus of Panama, and in the last generation every step was taken by this government that is deemed requisite in the premises. The necessity was foreseen and abundantly provided for, long in advance of any possible call for the actual exercise of power.

In 1846 a memorable and important treaty was negotiated and signed between the United States of America and the Republic of New Granada, now the United States of Colombia. By the thirty-fifth article of that treaty, in exchange for certain concessions made to the United States, we guaranteed "positively and efficaciously" the perfect neutrality of the isthmus and of any interoceanic communications that might be constructed upon or over it for the maintenance of free transit from sea to sea; and we also guaranteed the rights of sovereignty and property of the United States of Colombia over the territory of the isthmus as included within the borders of the State of Panama.

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In the judgment of the President this guarantee, given by the United States of America, does not require re-enforcement, or accession, or assent from any other power. In more than one instance this government has been called upon to vindicate the neutrality thus guaranteed, and there is no contingency, now foreseen or apprehended, in which such vindication would not be within the power of this nation.

There has never been the slightest doubt on the part of the United States as to the purpose or extent of the obligation then assumed, by which it became surety alike for the free transit of the world's commerce over whatever land-way or water-way might be opened from sea to sea, and for the protection of the territorial rights of Colombia from aggression or interference of any kind. Nor has there ever been room to question the full extent of the advantages and benefits, naturally due to its geographical position and political relations on the Western continent, which the United States obtained from the owner of the isthmian territory in exchange for that far-reaching and responsible guarantee.

If the foreshadowed action of the European powers should assume tangible shape, it would be well for you to bring to the notice of Lord Granville the provisions of the treaty of 1846, and especially of its thirty-fifth article, and to intimate to him that any movement in the sense of supplementing the guarantee contained therein would necessarily be regarded by this government as an uncalled-for intrusion into a field where the local and general interests of the United States of America must be considered before those of any other power save those of the United States of Colombia, alone, which has already derived and will continue to derive such eminent advantages from the guarantee of this government.

The President deems it due to frankness to be still more explicit on this subject, and to elucidate the views of the United States Government with somewhat of detail, to the end that no uncertainty shall subsist as to the integrity of our motives or the distinctness of our aims.

It is not the wish or the purpose of the United States to interfere with any commercial enterprise in which the citizens or subjects of any foreign power may see fit to embark under a lawful privilege. The fact of the stock and franchises of the Panama Canal or the Panama Railway being owned in Europe, either in whole or principally, is no more a subject of complaint on the part of the United States than is the circumstance that the stock of many of its own great lines of railway is largely held abroad. Such ownership, with its attendant rights, is in the United States amply secured by the laws of the land, and on the Isthmus is doubly secured by the local laws of Colombia, under the superior guarantee of the United States.

Nor, in time of peace, does the United States seek to have any exclusive privileges accorded to American ships in respect to precedence or tolls through an interoceanic canal any more than it has sought like privileges for American goods in transit over the Panama Railway, under the exclusive control of an American corporation. The extent of the privileges of American citizens and ships is measurable under the treaty of 1846 by those of Colombian citizens and ships. It would be our earnest desire and expectation to see the world's peaceful commerce enjoy the same just, liberal, and rational treatment.

It is as regards the political control of such a canal, as distinguished from its merely administrative or commerical regulation, that the President feels called upon to speak with directness and with emphasis. During any war to which the United States of America or the United

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States of Colombia might be a party, the passage of armed vessels of a hostile nation through the canal of Panama would be no more admissible than would the passage of the armed forces of a hostile nation over the railway lines joining the Atlantic and Pacific shores of the United States or of Colombia. And the United States of America will insist upon her right to take all needful precautions against the possibility of the isthmus transit being in any event used offensively against her interests upon the land or upon the sea.

The two republics between which the guarantee of neutrality and possession exists have analogous conditions with respect to their territorial extension. Both have a long line of coast on either ocean to protect as well as to improve. The possessions of the United States upon the Pacific coast are imperial in extent and of extraordinary growth. Even at their present stage of development they would supply the larger part of the traffic which would seek the advantages of the canal. The States of California and Oregon, and the Territory of Washington, larger in area than England and France, produce for export more than a ton of wheat for each inhabitant, and the entire freights demanding water transportation eastward, already enormous, are augmenting each year with an accelerating ratio. While the population and products of the Pacific slope are thus increasing upon a vast scale, the railway system connecting the Gulf of Mexico with the interior and with the Great Lakes is being rapidly extended, thus affording additional facilities for enlarging the commerce that must seek the coast-line to the Pacific, of which the projected canal at Panama will form a part, and be as truly a channel of communication between the Eastern and far Western States as our own transcontinental railways. It is the perception of this domestic function of the long-sought water-way between the two seas that border the republic which has caused the project to be regarded as of vital importance by this government. The history of the enterprise is marked from the outset by the numerous expeditions which have, from time to time, been sent out by the United States at large expense to explore the various routes, and thus facilitate the work when the time should be ripe and the vast capital be forthcoming for the undertaking.

If the proposed canal were a channel of communication near to the countries of the Old World, and employed wholly, or almost wholly, by their commerce, it might very properly be urged that the influence of the European powers should be commensurate with their interests. With the exercise of such influence the United States could find no fault, especially if assured of equal participation in the peaceable enjoyment of the commercial facilities so afforded. The case, however, is here reversed, and an agreement between the European states to jointly guarantee the neutrality and in effect control the political character of a highway of commerce, remote from them and near to us, forming substantially a part of our coast-line and promising to become the chief means of transportation between our Atlantic and Pacific States, would be viewed by this government with the gravest concern.

The policy of the United States is one of peace and friendly intercourse with every government and people. This disposition is frankly avowed, and is, moreover, abundantly shown in the fact that our armaments by land and sea are kept within such limits as to afford no ground for distrust or suspicion of menace to other nations. The guarantee entered into by this government in 1846 was manifestly in the interest of peace, and the necessity imposed by circumstances upon the United States of America to watch over a highway between its two coasts was so imperative that the resultant guarantee was the simplest justice to the chief interests concerned. Any attempt to supersede that guaran-

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tee by an agreement between European powers, which maintain vast armies and patrol the sea with immense fleets, and whose interest in the canal and its operations can never be so vital and supreme as ours, would partake of the nature of an alliance against the United States, and would be regarded by this government as an indication of unfriendly feeling. It would be but an inadequate response to the good-will we bear them and to our cheerful and constant recognition of their own rights of domestic policy, as well as those resulting from proximity or springing from neighborly interest.

The great European powers have repeatedly united in agreements such as guarantees of neutrality touching the political condition of states like Luxembourg, Belgium, Switzerland, and parts of the Orient, where the localities were adjacent or where the interests involved concerned them nearly and deeply. Recognizing these facts, the United States has never offered to take part in such agreements or to make any agreements supplementary to them.

While thus observing the strictest neutrality with respect to complications abroad, it is the long-settled conviction of this government that any extension to our shores of the political system by which the great powers have controlled and determined events in Europe would be attended with danger to the peace and welfare of this nation.

While the Government of the United States has no intention of initiating any discussion upon this subject, it is proper that you should be prepared, in case of concerted action or conference or exchange of opinions thereon between the great powers of Europe, to communicate to the government to which you are accredited the views of the President as frankly and as fully as they are herein set forth. And at suitable times in your personal and friendly intercourse with your colleagues of the diplomatic body at London, you may find it proper to give discreet expression to the policy and motives of your government in the premises.

You will be careful, in any conversations you may have, not to represent the position of the United States as the development of a new policy, or the inauguration of any advanced, aggressive steps to be taken by this government. It is nothing more than the pronounced adherence of the United States to principles long since enunciated by the highest authority of the government, and now, in the judgment of the President, firmly inwoven as an intregral and important part of our national policy.

In his address upon taking the oath of office the President distinctly proclaimed the position which the Government of the United States would hold upon this question, and if the European cabinets have failed to observe or give due heed to the declarations then made, it may be well for you on some proper occasion to call the attention of the minister of foreign affairs to the language used by the President.

I am, &c.,

JAMES G. BLAINE.

Sent *mutatis mutandis* to the United States ministers in Europe.

69.—*Mr. Hoppin to Mr. Blaine.*

No. 218.] LEGATION OF THE UNITED STATES,
London, November 11, 1881. (Received November 26.)

SIR: Referring to your instructions No. 187, of the 24th of June last, and No. 188, of the 25th of June last, to Mr. Lowell, in relation to the

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proposed guarantee by European powers of the neutrality of the projected canal across the Isthmus of Panama, I have the honor to acquaint you that Mr. Lowell, agreeably to the suggestion in No. 187, left a copy of that instruction at the foreign office on the 12th of July last. I have to-day received a letter from Lord Granville in reply to that instruction, and I beg to inclose a copy of the same herewith.

I have, &c.,

W. J. HOPPIN.

[Inclosure with No. 218.]

Lord Granville to Mr. Hoppin.

FOREIGN OFFICE, *November 10, 1881.*

SIR: You are doubtless aware that Mr. Lowell left with this department on the 12th of July last a copy of a dispatch which had been addressed to him by Mr. Blaine on the 24th of June, in which the Secretary of State calls attention to the right and duty which are imposed on the United States Government under the treaty signed in 1846 between the United States of America and the Republic of New Granada, now known as the United States of Colombia, to guarantee the neutrality of the interoceanic canal which is projected across the Isthmus of Panama. Mr. Blaine further points out the special interest which the United States have in the preservation of this neutrality, and in preventing the use of the canal in a manner detrimental to themselves during any war in which the United States or Colombia might be a party.

But the point on which special stress is laid in this dispatch is the objection entertained by the Government of the United States to any concerted action of the European powers for the purpose of guaranteeing the neutrality of the canal or determining the conditions of its use.

I have now the honor to state to you that although some time has elapsed since the views of the United States Government on this question were communicated to Her Majesty's Government, they have not failed in the mean while to bestow upon it all the consideration to which the importance of the subject gives it every claim, and if it has not received an earlier recognition the delay has been mainly caused by the suspense which so long existed as to the termination of the sad tragedy of the 2d of July.

Her Majesty's Government have noted with satisfaction the statement made by Mr. Blaine that there is no intention on the part of the Government of the United States to initiate any discussion upon this subject, and in the same spirit I do not now propose to enter into a detailed argument in reply to Mr. Blaine's observations.

I should wish, therefore, merely to point out to you that the position of Great Britain and the United States with reference to the canal, irrespective of the magnitude of the commercial relations of the former power with countries to and from which, if completed, it will form the highway, is determined by the engagements entered into by them, respectively, in the convention which was signed at Washington on the 19th of April, 1850, commonly known as the Clayton-Bulwer treaty, and Her Majesty's Government rely with confidence upon the observance of all the engagements of that treaty.

I have, &c., GRANVILLE.

70.—*Mr. Blaine to Mr. Lowell.*

270.] DEPARTMENT OF STATE,
Washington, November 19, 1881.

SIR: In pursuance of the premises laid down in my circular note of June 24 of this year touching the determination of this government with respect to the guarantee of neutrality for the interoceanic canal at Panama, it becomes my duty to call your attention to the convention of April 19, 1850, between Great Britain and the United States, commonly known as the Clayton-Bulwer treaty.

According to the articles of that convention the high contracting parties, in referring, to an interoceanic canal through Nicaragua, agreed "that

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neither the one nor the other will ever obtain or maintain for itself any exclusive control over said ship-canal, and that neither will ever erect or maintain any fortifications commanding the same or in the vicinity thereof." In a concluding paragraph the high contracting parties agreed "to extend their protection by treaty stipulations to any other practical communications, whether by canal or railway, across the Isthmus * * * which are now proposed to be established by way of Tehuantepec or Panama."

This convention was made more than thirty years ago, under exceptional and extraordinary conditions which have long since ceased to exist—conditions which at best were temporary in their nature, and which can never be reproduced.

The remarkable development of the United States on the Pacific coast since that time has created new duties for this government, and devolved new responsibilities upon it, the full and complete discharge of which requires in the judgment of the President some essential modifications in the Clayton-Bulwer treaty. The interests of Her Majesty's Government involved in this question, in so far as they may be properly judged by the observation of a friendly power, are so inconsiderable in comparison with those of the United States that the President hopes a readjustment of the terms of the treaty may be reached in a spirit of amity and concord.

The respect due to Her Majesty's Government demands that the objections to the perpetuity of the convention of 1850, as it now exists, should be stated with directness and with entire frankness. And among the most salient and palpable of these is the fact that the operation of the treaty practically concedes to Great Britain the control of whatever canal may be constructed.

The insular position of the home government, with its extended colonial possessions, requires the British Empire to maintain a vast naval establishment, which, in our continental solidity, we do not need, and in time of peace shall never create. If the United States binds itself not to fortify on land, it concedes that Great Britain, in the possible case of a struggle for the control of the canal, shall at the outset have an advantage which would prove decisive, and which could not be reversed except by the expenditure of treasure and force. The presumptive intention of the treaty was to place the two powers on a plane of perfect equality, with respect to the canal, but in practice, as I have indicated, this would prove utterly delusive, and would instead surrender it, if not in form, yet in effect, to the control of Great Britain.

The treaty binds the United States not to use its military force in any precautionary measure, while it leaves the naval power of Great Britain perfectly free and unrestrained; ready at any moment of need to seize both ends of the canal, and render its military occupation on land a matter entirely within the discretion of Her Majesty's Government.

The military power of the United States, as shown by the recent civil war, is without limit, and in any conflict on the American continent altogether irresistible. The Clayton-Bulwer treaty commands this government not to use a single regiment of troops to protect its interests in connection with the interoceanic canal, but to surrender the transit to the guardianship and control of the British navy. If no American soldier is to be quartered on the Isthmus to protect the rights of his country in the interoceanic canal, surely, by the fair logic of neutrality, no war vessel of Great Britain should be permitted to appear in the waters that control either entrance to the canal.

A more comprehensive objection to the treaty is urged by this govern-

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ment. Its provisions embody a misconception of the relative positions of Great Britain and the United States with respect to the interests of each government in questions pertaining to this continent. The Government of the United States has no occasion to disavow an aggressive disposition. Its entire policy establishes its pacific character, and among its chief aims is to cultivate the most friendly and intimate relations with its neighbors, both independent and colonial. At the same time, this government, with respect to European states, will not consent to perpetuate any treaty that impeaches our right and long-established claim to priority on the American continent.

The United States seeks only to use for the defense of its own interests the same forecast and provision which Her Majesty's Government so emphatically employs in defense of the interests of the British Empire. To guard her Eastern possessions, to secure the most rapid transit for troops and munitions of war, and to prevent any other nation having equal facilities in the same direction, Great Britain holds and fortifies all the strategic points that control the route to India. At Gibraltar, at Malta, at Cyprus, her fortifications give her the mastery of the Mediterranean. She holds a controlling interest in the Suez Canal, and by her fortifications at Aden and on the island of Perim she excludes all other powers from the waters of the Red Sea and renders it a *mare clausum*. It would, in the judgment of the President, be no more unreasonable for the United States to demand a share in these fortifications, or to demand their absolute neutralization, than for England to make the same demand in perpetuity from the United States with respect to the transit across the American continent. The possessions which Great Britain thus carefully guards in the East are not of more importance to her than is the Pacific slope, with its present development and assured growth, to the Government of the United States.

The States and Territories appurtenant to the Pacific Ocean and dependent upon it for commercial outlet, and hence directly interested in the canal, comprise an area of nearly eight hundred thousand square miles, larger in extent than the German Empire and the four Latin countries of Europe combined.

This vast region is but fairly beginning its prosperous development. Six thousand miles of railway are already constructed within its limits, and it is a moderate calculation to say that within the current decade the number of miles will at least be doubled. In the near future the money value of its surplus for export will be as large as that of British India, and perhaps larger. Nor must it be forgotten that India is but a distant colony of Great Britain, while the region on the Pacific is an integral portion of our national Union, and is of the very form and body of our state. The inhabitants of India are alien from England in race, language, and religion. The citizens of California, Oregon, and Nevada, with the adjacent Territories, are of our own blood and kindred—bone of our bone and flesh of our flesh.

Great Britain appreciates the advantage and perhaps the necessity of maintaining, at the cost of large military and naval establishments, the interior and nearest route to India, while any nation with hostile intent is compelled to take the longer route and travel many thousand additional miles through dangerous seas. It is hardly conceivable that the same great power which considers herself justified in taking these precautions for the safety of a remote colony on another continent should object to the United States adopting similar but far less demonstrative measures for the protection of the distant shores of her own domain, for the drawing together of the extremes of the Union in still closer bonds

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of interest and sympathy, and for holding, in the quiet determination of an honorable self-defense, the absolute control of the great waterway which shall unite the two oceans, and which the United States will always insist upon treating as part of her coast line.

If a hostile movement should at any time be made against the Pacific coast, threatening danger to its people and destruction to its property, the Government of the United States would feel that it had been unfaithful to its duty and neglectful towards its own citizens if it permitted itself to be bound by a treaty which gave the same right through the canal to a war-ship bent on an errand of destruction that is reserved to its own navy, sailing for the defense of our coast and the protection of the lives of our people. And as England insists by the might of her power that her enemies in war shall strike her Indian possessions only by doubling the Cape of Good Hope, so the Government of the United States will equally insist that the interior, more speedy, and safer route of the canal shall be reserved for ourselves, while our enemies, if we shall ever be so unfortunate as to have any, shall be remanded to the voyage around Cape Horn.

A consideration of controlling influence in this question is the well-settled conviction on the part of this government that only by the United States exercising supervision can the Isthmus canals be definitely and at all times secured against the interference and obstruction incident to war. A mere agreement of neutrality on paper between the great powers of Europe might prove ineffectual to preserve the canal in time of hostilities. The first sound of a cannon in a general European war would in all probability annul the treaty of neutrality, and the strategic position of the canal, commanding both oceans, might be held by the first naval power that could seize it. If this should be done the United States would suffer such grave inconvenience and loss in her domestic commerce as would enforce the duty of a defensive and protective war on her part for the mere purpose of gaining that control which in advance she insists is due to her position and demanded by her necessities.

I am not arguing or assuming that a general war, or any war at all, is imminent in Europe. But it must not be forgotten that within the past twenty-five years all the great powers of Europe have been engaged in war; most of them more than once. In only a single instance in the past hundred years has the United States exchanged a hostile shot with any European power. It is in the highest degree improbable that for a hundred years to come even that experience will be repeated.

It consequently becomes evident that the one conclusive mode of preserving any Isthmus canal from the possible distraction and destruction of war is to place it under the control of that government least likely to be engaged in war, and able, in any and every event, to enforce the guardianship which she shall assume.

For self-protection to her own interests, therefore, the United States in the first instance asserts her right to control the Isthmus transit. And, secondly, she offers by such control that absolute neutralization of the canal as respects European powers which can in no other way be certainly attained and lastingly assured.

Another consideration forcibly suggests the necessity of modifying the convention under discussion. At the time it was agreed to, Great Britain and the United States were the only nations prominent in the commerce of Central and South America. Since that time other leading nations have greatly enlarged their commercial connections with that country, and are to-day contending for supremacy in the trade of those shores. Within the past four years, indeed, the number of French

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and German vessels landing on the two coasts of Central America far exceeds the number of British vessels.

While, therefore, Great Britain and the United States may agree to do nothing, and, according to the present convention, each remains bound to the other in common helplessness, a third power, or a fourth, or a combination of many, may step in and give direction to the project which the Clayton-Bulwer treaty assumed was under the sole control of the two English-speaking nations. Indeed, so far as the canal scheme now projected at Panama finds a national sponsor or patron, it is in the Republic of France, and the non-intervention enjoined upon this country by the Clayton-Bulwer treaty, if applied to that canal, would paralyze the arm of the United States in any attempt to assert the plain rights and privileges which this government acquired through a solemn treaty with the Republic of Colombia anterior to the Clayton-Bulwer convention, so that the modification of the treaty of 1850, now sought, is not only to free the United States from unequal and inequitable obligations to Great Britain, but also to empower this government to treat with all other nations seeking a foothold on the Isthmus on the same basis of impartial justice and independence.

One of the motives that originally induced this government to assent to the Clayton-Bulwer treaty, not distinctly expressed in the instrument, but inferable from every line of it, was the expected aid of British capital in the construction of the Nicaraguan canal. That expectation has not been realized, and the changed condition of this country since 1850 has diminished, if it has not entirely removed from consideration, any advantage to be derived from that source. Whenever, in the judgment of the United States Government, the time shall be auspicious and the conditions favorable for the construction of the Nicaraguan canal, no aid will be needed outside of the resources of our own government and people; and while foreign capital will always be welcomed and never repelled, it cannot henceforth enter as an essential factor in the determination of this problem.

It is earnestly hoped by the President that the considerations now presented will have due weight and influence with Her Majesty's Government, and that the modifications of the treaty desired by the United States will be conceded in the same friendly spirit in which they are asked. The following is a summary of the changes necessary to meet the views of this government:

First. Every part of the treaty which forbids the United States fortifying the canal and holding the political control of it in conjunction with the country in which it is located to be canceled.

Second. Every part of the treaty in which Great Britain and the United States agree to make no acquisition of territory in Central America, to remain in full force. As an original proposition, this government would not admit that Great Britain and the United States should be put on the same basis, even negatively, with respect to territorial acquisitions on the American continent, and would be unwilling to establish such a precedent without full explanation. But the treaty contains that provision with respect to Central America, and if the United States should seek its annulment, it might give rise to erroneous and mischievous apprehensions among a people with whom this government desires to be on the most friendly terms. The United States has taken special occasion to assure the Spanish-American republics to the south of us that we do not intend and do not desire to cross their borders or in any way disturb their territorial integrity, and we shall not willingly incur the risk of a misunderstanding by annulling the

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clauses in the Clayton-Bulwer treaty which forbid such a step with Central America. The acquisition of military and naval stations necessary for the protection of the canal and voluntarily ceded to the United States by the Central American States, not to be regarded as a violation of the provisions contained in the foregoing.

Third. The United States will not object to maintaining the clause looking to the establishment of a free port at each end of whatever canal may be constructed, if England desires it to be retained.

Fourth. The clause in which the two governments agreed to make treaty stipulations for a joint protectorate of whatever railway or canal might be constructed at Tehauntepec or Panama has never been perfected. No treaty stipulations for the proposed end have been suggested by either party, although citizens of the United States long since constructed a railway at Panama, and are now engaged in the same work at Tehauntepec. It is a fair presumption, in the judgment of the President, that this provision should be regarded as absolute by the non-action and common consent of the two governments.

Fifth. The clause defining the distance from either end of the canal where in time of war captures might be made by either belligerent on the high seas was left incomplete, and the distance was never determined. In the judgment of the President, speaking in the interest of peaceful commerce, this distance should be made as liberal as possible, and might, with advantage, as a question relating to the high seas and common to all nations, be a matter of stipulation between the great powers of the world.

In assuming as a necessity the political control of whatever canal or canals may be constructed across the Isthmus, the United States will act in entire harmony with the governments within whose territory the canals shall be located. Between the United States and the other American republics there can be no hostility, no jealousy, no rivalry, no distrust. This government entertains no design in connection with this project for its own advantage which is not also for the equal or greater advantage of the country to be directly and immediately affected. Nor does the United States seek any exclusive or narrow commercial advantage. It frankly agrees and will by public proclamation declare at the proper time, in conjunction with the republic on whose soil the canal may be located, that the same rights and privileges, the same tolls and obligations for the use of the canal, shall apply with absolute impartiality to the merchant marine of every nation on the globe. And equally in time of peace, the harmless use of the canal shall be freely granted to the war vessels of other nations. In time of war, aside from the defensive use to be made of it by the country in which it is constructed and by the United States, the canal shall be impartially closed against the war vessels of all belligerents.

It is the desire and determination of the United States that the canal shall be used only for the development and increase of peaceful commerce among all the nations, and shall not be considered a strategic point in warfare which may tempt the aggression of belligerents or be seized under the compulsions of military necessity by any of the great powers that may have contests in which the United States has no stake and will take no part.

If it be asked why the United States objects to the assent of European governments to the terms of neutrality for the operation of the canal, my answer is that the right to assent implies the right to dissent, and thus the whole question would be thrown open for contention as an international issue. It is the fixed purpose of the United States to con-

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fine it strictly and solely as an American question, to be dealt with and decided by the American Government.

In presenting the views contained herein to Lord Granville, you will take occasion to say that the Government of the United States seeks this particular time for the discussion as most opportune and auspicious. At no period since the peace of 1783 have relations between the British and American Governments been so cordial and friendly as now. And I am sure Her Majesty's Government will find in the views now suggested and the propositions now submitted additional evidence of the desire of this government to remove all possible grounds of controversy between two nations which have so many interests in common and so many reasons for honorable and lasting peace.

You will, at the earliest opportunity, acquaint Lord Granville with the purpose of the United States touching the Clayton-Bulwer treaty, and in your own way you will impress him fully with the views of your government.

I refrain from directing that a copy of this instruction be left with his lordship, because in reviewing the case I have necessarily been compelled, in drawing illustrations from British policy, to indulge somewhat freely in the *argumentum ad hominem.*

This course of reasoning in an instruction to our own minister is altogether legitimate and pertinent, and yet might seem discourteous if addressed directly to the British Government. You may deem it expedient to make this explanation to Lord Granville, and if, afterwards, he shall desire a copy of this instruction, you will of course furnish it.

I am, &c.,

JAMES G. BLAINE.

71.—*Mr. Blaine to Mr. Lowell.*

No. 281.]

DEPARTMENT OF STATE,
Washington, November 29, 1881.

SIR: One week after mailing my instruction to you, on the 19th instant, touching the presentation to Her Majesty's Government of a proposal for the modification of the convention between the two countries of April 19, 1850, better known as the Clayton-Bulwer treaty, I received Mr. Hoppin's No. 218, of the 11th instant, communicating the response of Lord Granville to my circular note of the 24th of June last, in relation to the neutrality of any canal across the Isthmus of Panama. I regret that Mr. Hoppin should not have advised me by telegraph of the purport of his lordship's reply, as it would have enabled me to present the arguments of my dispatch of the 19th instant in a more specific form, as meeting a positive issue, rather than as generally dealing with a subject which, for thirty years, has been regarded in but one light by the public opinion of the United States. It seems proper now, however, in reply to his lordship's note of November 10, to give a summary of the historical objections to the Clayton-Bulwer treaty, and the very decided differences of opinion between the two governments to which its interpretation has given rise.

I need hardly point out to you the well-known circumstance that, even at the time of the conclusion of the Clayton-Bulwer treaty, a very considerable opposition was shown thereto on the part of the far-sighted men in public life who correctly estimated the complications which the uncertain terms of that compact might occasion. It was ably contended in Congress that its provisions did not, even then, suffice to meet the

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real points at issue with respect to the guarantee of the neutrality of the whole American isthmus on bases comporting with the national interests of the United States, and the differences of interpretation became soon after so marked as to warrant the extreme proposal of Her Majesty's Government to refer them to the arbitration of a friendly power.

The justice of those doubts became still more evident six years later, when the pretensions put forth by Her Majesty's Government toward territorial protection, if not absolute control, of portions of Nicaragua and of the outlying Bay Islands brought up the precise question of how far the provisions of the Clayton-Bulwer compact operated to restrain the projected movement, and thereupon the interpretations respectively put upon that instrument by the United States and Great Britain were perceived to be in open conflict. The attempt made in the Clarendon-Dallas treaty, which was negotiated on the 17th of October, 1856, to reconcile these opposing contentions and to place the absolute and independent sovereignty of Nicaragua over its territory on an unmistakable footing, so far as the United States and Great Britain were concerned, failed to be completed by reason of the rejection by Her Majesty's Government of an amendment introduced by the Senate into the Clarendon-Dallas project. From that time onward the inability of the two governments to agree upon a common interpretation of the letter and spirit of the Clayton-Bulwer treaty may be accepted as a historical fact.

In the discussions between the two governments which attended the failure of the Clarendon-Dallas treaty the attitude of the United States with respect to the Clayton-Bulwer treaty was amply defined. As early as the 12th of March, 1857, I find that General Cass, then Secretary of State, in the course of a conference with Lord Napier, Her Majesty's representative,

> Passed some reflections on the Clayton-Bulwer treaty; he had voted for it, and in doing so he believed that it abrogated all intervention on the part of England in the Central American territory. The British Government had put a different construction on the treaty, and he regretted the vote he had given in its favor. (Dispatch of Lord Napier to the Earl of Clarendon, March 12, 1857.)

On the 6th of May, 1857, President Buchanan, in an audience given to Lord Napier, and in response to his lordship's suggestion that if the attempted adjustment of the difference between the governments as to the Clarendon-Dallas treaty should fail, the Clayton-Bulwer treaty remained to fall back upon, characterized that instrument in much stronger terms than General Cass had done. To quote Lord Napier's words:

> The President denounced the Clayton-Bulwer treaty as one which has been fraught with misunderstanding and mischief from the beginning. It was concluded under the most opposite constructions by the contracting parties. If the Senate had imagined that it could obtain the interpretation placed upon it by Great Britain it would not have passed. If he had been in the Senate at the time that treaty never would have been sanctioned. (Dispatch of Lord Napier to the Earl of Clarendon, May 6, 1857.)

These views are more explicitly and formally repeated in a note addressed by Secretary Cass to Lord Napier on the 29th of May, 1857. He says:

> The Clayton-Bulwer treaty, concluded in the hope that it would put an end to the differences which had arisen between the United States and Great Britain concerning Central American affairs, had been rendered inoperative in some of its most essential provisions by the different constructions which had been reciprocally given to it by the parties. And little is hazarded in saying that, had the interpretation since put upon the treaty by the British Government, and yet maintained, been anticipated, it would not have been negotiated under the instructions of any Executive of the United States nor ratified by the branch of the government intrusted with the power of ratification.

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The publicity of these statements, and the strong feeling which then prevailed in all quarters that the Clayton-Bulwer convention was inadequate to reconcile the opposite views of Great Britain and the United States towards Central America, led to a very decided conviction that the treaty should be abrogated. Lord Napier reflected this growing impression when, on the 22d of June, 1857, he wrote to Lord Clarendon that—

> It is probable that if the pending discussions regarding Central America be not closed during the present summer, an attempt will be made in the next session of Congress to set aside the Clayton-Bulwer treaty. * * * There can be no doubt of the views of the President and Cabinet on this matter.

Before this tendency could, however, find its expression in any official act, a movement on the part of Her Majesty's Government placed the whole matter in a new aspect. Sir William Gore Ouseley was sent out, October 30, 1857, as a special minister, with the double purpose of concluding with the Central American States, and especially with Guatemala and Honduras, settlements of the questions relative to the Bay Islands, the Mosquito territory, and the boundaries of British Honduras, and also of visiting Washington on the way, and conferring with the Secretary of State of the United States for the purpose of ascertaining the views of his government, and establishing "a perfect understanding with the United States upon the points respecting which differences have hitherto existed between the two countries."

Among these differences was now superadded to the territorial question of Mosquito and the islands, the very question which to-day most concerns us, the question of interoceanic communication, which had for some time been the occasion of correspondence between General Cass and Lord Napier, and in relation to which General Cass wrote, on the 20th of October, 1857, as follows:

> I have thus endeavored to meet the frank suggestions of your lordship by restating with corresponding frankness the general policy of the United States with respect to the governments and the interoceanic transits of Central America. But since your lordship has referred to the Clayton-Bulwer treaty of 1850, as contemplating a harmonious course of action and counsel between the contracting parties in the settlement of Central American interests, you will pardon me for reminding your lordship that the differences which this treaty was intended to adjust between the United States and Great Britain still remain unsettled, while the treaty itself has become the subject of new and embarrassing complications.

Prior to the arrival of Sir William Ouseley in the United States Lord Napier held an important interview with President Buchanan on the 19th of October, 1857, with the object of obtaining "further elucidation of the opinions of the President with reference to the adjustment of the Clayton-Bulwer treaty." On that occasion Lord Napier declared that he believed it the intention of Her Majesty's Government, in Sir William Ouseley's mission, "to carry the Clayton-Bulwer treaty into execution according to the general tenor of the interpretation put upon it by the United States; but to do so by separate negotiation with the Central American republics, in lieu of a direct engagement with the Federal Government," and asked that, pending the negotiation intrusted to Sir William Ouseley, "no proposal to annul the [Clayton-Bulwer] treaty would be sanctioned or encouraged" by the President or the members of the United States Government. To this the President cheerfully consented, and promised to modify the statements in his annual message to Congress accordingly, and under no circumstances to countenance any attempt against the Clayton-Bulwer treaty in Congress.

Matters being in this state, with Sir William Ouseley's mission announced, and the benevolently expectant attitude of the United States

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toward it assured, Lord Napier, on the 27th of October, 1857, in conference with General Cass, brought up contingently, as a discarded alternative of his government, a former proposal to refer the disputed questions to arbitration.

The general remarked in reply [says Lord Napier, writing to the Earl of Clarendon] that he did not repudiate the principle of arbitration on all occasions; he had invoked it, and would do so again where it seemed justly applicable; but that in this matter it was declined by the American Government for the following reasons: The language of the treaty was so clear that in his opinion there ought not to be two opinions about it. * * * Then it was a mere question of the interpretation of the English language, and he held that a foreign government was not so competent to decide in such a question as the United States and England, who possessed that language in common.

The Earl of Clarendon, in reply, approved of Lord Napier's course in broaching anew the suggestion of arbitration, and authorized him to renew formally in writing the offer to refer the disputed questions arising out of the interpretation of the Clayton-Bulwer treaty to the decision of any European power (instruction of November 13, 1857), and this was accordingly done by Lord Napier in a note to General Cass dated November 30, 1857.

In his annual message to Congress in December, 1857, President Buchanan, after narrating the negotiation and failure of the Clarendon-Dallas treaty, said:

The fact is, that when two nations like Great Britain and the United States, mutually desirous as they are, and I trust ever may be, of maintaining the most friendly relations with each other, have unfortunately concluded a treaty which they understand in senses directly opposite, the wisest course is to abrogate such a treaty by mutual consent and to commence anew. * * * Whilst entertaining these sentiments, I shall nevertheless not refuse to contribute to any reasonable adjustment of the Central American questions which is not practically inconsistent with the American interpretation of the treaty. Overtures for this purpose have been recently made by the British Government in a friendly spirit, which I cordially reciprocate.

Meanwhile the Earl of Clarendon had instructed Sir William Ouseley, under date of November 19, 1857, "not to commit Her Majesty's Government to any course whatever in respect to the Bay Islands till the intentions of the Congress of the United States in regard to the treaty of 1850 are clearly ascertained."

The situation, then, at the close of 1857 presented a triple dead-lock. The United States had agreed not to move toward the abrogation of the treaty until it could be seen what interpretation of its provisions would result from Sir William Ouseley's mission. Sir William had received positive instructions not to move until the United States should decide whether to abrogate the treaty or not, and. Lord Napier was forbidden to move until the United States should make formal answer to the proposal for arbitration. The instructions of Lord Clarendon to Lord Napier, January 22, 1858, contained these words:

We are decidedly of opinion that it would neither be consistent with our dignity or our interest to make any proposal to the United States Government until we have received a formal answer to our formal offer of arbitration. In event of the offer being refused, it will be a great and hardly justifiable proof of the spirit of conciliation by which we are animated if we then show ourselves disposed to abrogate the Clayton-Bulwer treaty; but we must not be in too great haste.

In order, apparently, to break this dead-lock, Lord Napier wrote to General Cass, February 17, 1858, that—

Something in the nature of an alternative was thus offered to the American Cabinet. Should the expedient of arbitration be adopted a great portion of Sir William Ouseley's duty would be transferred to other agencies. Should arbitration be declined, it was hoped that the efforts of Her Majesty's envoy would result in a settlement agreeable to the United States, inasmuch as in essential points it would carry the treaty of 1850 into operation in a manner practically conformable to the American interpretation of that instrument.

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On the 10th of March, 1858, the Earl of Malmesbury, who had succeeded Lord Clarendon in the foreign office, instructed Lord Napier that until an answer was returned to the proposal for arbitration "no further steps can be taken by Her Majesty's Government with that of the United States in regard to that matter;" and, further, that—

When this point is cleared up, Her Majesty's Government, supposing that the Government of the United States decline arbitration, will have to determine whether they should originate a proposal for the abrogation of the Clayton-Bulwer treaty or adopt any other course which the circumstances at the moment may seem to recommend.

It appears, however, that the proposal to abrogate the treaty which Lord Malmesbury reserved the right to originate had already been communicated to the Government of the United States by Lord Napier, under instructions from Lord Clarendon. In a dispatch dated March 22, 1858, Lord Napier wrote:

The Earl of Clarendon authorized me to inform General Cass that Her Majesty's Government would not decline the consideration of a proposal for the abrogation of the treaty by mutual concert. * * * I have, accordingly, on two occasions, informed General Cass that if the Government of the United States be still of the same mind, and continue to desire the abrogation of the treaty of 1850, it would be agreeable to Her Majesty's Government that they should insert a proposal to that effect in their reply to my note respecting arbitration.

Lord Napier further reports in detail the conversations had with General Cass as to the most proper method of affecting such abrogation, if agreed to.

In reply to this dispatch of Lord Napier, the Earl of Malmesbury instructed him, April 8, 1858, that his action was approved, and that he should confine himself to pressing for an answer to his proposal for arbitration. His lordship added these significant words:

Her Majesty's Government, if the initiative is still left to them by the unwillingness of the United States themselves to propose abrogation, desire to retain full liberty as to the manner and form in which any such proposal shall be laid on their behalf before the Cabinet at Washington. * * * The Clayton-Bulwer treaty has been a source of unceasing embarrassment to this country, and Her Majesty's Government, if they should be so fortunate as to extricate themselves from the difficulties which have resulted from it, will not involve themselves, directly or indirectly, in any similar difficulties for the future.

The answer of General Cass to Lord Napier's several proposals was, briefly, to the effect that pending the results expected from Sir William Ouseley's mission to the Central American States the United States could not adopt the alternative of arbitration, "even if it had not been twice rejected before," and, that if—

The President does not hasten to consider now the alternative of repealing the treaty of 1850, it is because he does not wish prematurely to anticipate the failure of Sir William Ouseley's mission, and is disposed to give a new proof to Her Majesty's Government of his sincere desire to preserve the amicable relations which now happily subsist between the two countries. (General Cass to Lord Napier, April 6, 1858.)

In this posture of affairs the Earl of Malmesbury instructed Sir William Ouseley to open direct negotiations with the Central American States, and on the 18th of August instructed Lord Napier to inform the Government of the United States of the intentions and object of her Majesty's Government in the premises. His lordship added:

Modification, arbitration, and abrogation of the Clayton-Bulwer treaty have been *flatly rejected* [the italics are my own]. Great Britain and Nicaragua are now about to treat as independent States.

I have emphasized the phrase "flatly rejected" in view of a subse-

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quent instruction of the Earl of Malmesbury to Lord Napier on the 8th of December, 1858, wherein he said:

> I think you would have done better if you had not too pointedly brought before the United States Government the notion that the British Government might view with favor a proposal to abrogate the Clayton-Bulwer treaty.

It is not difficult, in following this narrative, to discern that General Cass, though not desiring to express it, had an additional motive for declining at that particular time to propose the abrogation of the Clayton-Bulwer treaty. He did not desire by such proposed abrogation to indicate his willingness that Sir William Gore Ouseley should make treaties with the separate states of Central America, unrestrained by the clauses of the Clayton-Bulwer treaty inhibiting the extension of British power in that region. General Cass, with his accustomed caution and wisdom, clearly perceived that for the United States to propose abrogation on the very eve of Sir William Ouseley's mission would lead to injurious inferences, and would imply conclusions which the United States was not prepared to admit.

Objectionable as General Cass thought the Clayton-Bulwer treaty, he thought it was better than giving the implied consent of this government that Great Britain should obtain such treaties as the force of her power might secure in Central America.

The subsequent note of Lord Malmesbury, not strained by an uncharitable construction, throws additional light on the subject, and confirms the wisdom of General Cass in declining to propose abrogation at that time. And, besides, General Cass evidently desired to retain those very clauses of the Clayton-Bulwer treaty to which, in my dispatch of the 19th, I proposed on the part of this government to adhere.

I have dwelt with somewhat of detail on this particular historic episode, partly because it admirably illustrates the spirit with which both governments have regarded the Clayton-Bulwer treaty from the first, and partly because it had more direct bearing on the question of the guarantee of any isthmian transit than any other discussion of the time. In perusing the voluminous correspondence, unprinted as well as that printed and submitted at the time to Congress and to Parliament, I am more than ever struck by the elastic character of the Clayton-Bulwer treaty, and the admirable purpose it has served as an ultimate recourse on the part of either government to check apprehended designs in Central America on the part of the other; although all the while it was frankly admitted on both sides that the engagements of the treaty were misunderstandingly entered into, imperfectly comprehended, contradictorily interpreted, and mutually vexatious.

I am, as I must confess, strengthened in this impression by the circumstance that, in his response to my dispatch of the 24th of June last, Earl Granville takes the ground that the position of Great Britain and the United States toward the projected Panama Canal is determined by the Clayton-Bulwer treaty. It does not seem likely to become a subject for discussion how far the engagements of that compact in reality extend to the Isthmus of Panama under the provisions of Article VIII thereof in the same precise sense in which they extend to the projected Nicaraguan transit.

For it will be observed that this article does not stretch the guarantees and restrictions of Article I over either the Tehuantepec route through Mexican territory or the Panama route through Colombian territory. It is in terms an agreement to extend the protection of both countries, by treaty stipulations, to those or any other practicable water-

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ways or railways, from ocean to ocean, across the Isthmus, outside of Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America. So far as this inchoate agreement to hereafter agree is applicable to the Panama transit, I have amply shown, in my No. 270 of the 19th instant, that the obligations embraced on the part of the United States in concluding the prior convention with the Republic of New Granada (now Colombia) in 1846 require that the United States should be freed from unequal and inequitable obligations to Great Britain under the vague and, as yet, unperfected compact of 1850.

My main object in writing this instruction has been to strengthen your hands in any discussion which may now ensue as to the benefits of the Clayton-Bulwer treaty and the mutual interest of the two countries in conserving it as the basis of a settlement of all disputes between them touching Central American and isthmian questions. It will be seen that, from the time of its conclusion in 1850 until the end of 1858, its provisions were thrice made the basis of a proposal to arbitrate as to their meaning, that modification and abrogation have been alike contingently considered, and that its vexatious and imperfect character has been repeatedly recognized on both sides. The present proposal of this government is to free it from those embarrassing features, and leave it, as its framers intended it should be, a full and perfect settlement, for all time, of all possible issues between the United States and Great Britain with regard to Central America.

If in your conferences with Earl Granville it should seem necessary, you will make free use of the precedents I have cited, and should you, within the discretionary limits confided at the end of my No. 270, have given a copy thereof to his lordship, you are equally at liberty to let him have a copy of this also, with the same explanation, that it is for you use, and not written as a formal note for communication to Her Majesty's Government.

I am, &c.,

JAMES G. BLAINE.

72.—*Mr. Lowell to Mr. Blaine.*

No. 266.] LEGATION OF THE UNITED STATES,
London, December 15, 1881. (Received December 29.)

SIR: I have the honor to acquaint you that on the 13th instant I had an interview with Lord Granville at the foreign office, and communicated to him the substance of your instruction No. 270, of the 19th ultimo. I then, at his request, read it to him, beginning, however, with the concluding paragraph, for obvious reasons. At his desire I left a copy with him.

I thought it wiser, in a matter of so much moment, that he should receive the views of the President as they were conveyed in the dispatch, rather than, perhaps, to weaken their force by communicating them in my own manner, as I was authorized by you to do.

Lord Granville listened with great attention, and merely said that he should reserve his answer.

I have, &c.,

J. R. LOWELL.

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73.—*Mr. Lowell to Mr. Blaine.*

No. 277.] LEGATION OF THE UNITED STATES,
London, December 27, 1881. (Received January 9, 1882.)

SIR: I have the honor to report that so soon as I received your instruction No. 281, the 29th ultimo, I addressed a private note to Lord Granville informing him of the fact, and asking him when it would be convenient for him to favor me with an interview. In his reply he asked me if I could come to him at Walmer, where he was detained by the hospitalities of the Christmas season. Thinking it important that he should see the dispatch as soon as possible, because it was so nearly related to your No. 270, I accordingly went down to Walmer on the 23d instant. I there read the dispatch to him, and at his desire left a copy of it with him. I did not think it prudent or proper to enter upon any discussion with Lord Granville upon the general topics of the dispatch, but as some of the newspapers here had criticised it as untimely, I thought it not out of place to remind him that the policy of the United States had already been clearly indicated in a message to Congress by President Hayes, and more strongly reiterated in the same public manner by President Garfield.

Lord Granville was, as usual, exceedingly courteous and friendly, but made no remark except that the publication of No. 270, before an opportunity was given him of replying to it, "seemed to him, to say the least, unusual."

I have, &c.,

J. R. LOWELL.

74.—*Lord Granville to Mr. West.*

FOREIGN OFFICE, *January 7, 1882.*

SIR: In my dispatch No. 279*a* of the 13th ultimo I informed you that the United States minister at this court had communicated to me the substance of a dispatch which he had received from Mr. Blaine, then Secretary of State, on the subject of the convention of the 19th April, 1850. Finding that Mr. Lowell was authorized to give me a copy of this dispatch, if I wished it, I requested him to do so, and I have already forwarded to you a copy for you information.

Her Majesty's Government have given their careful consideration to the views set forth in this paper. They entirely agree in the statement made towards its conclusion as to the cordial relations so happily existing between the two countries, and as to the opportunity which this state of things affords for a frank exposition of the views held by either government without risk of misconstruction. They have no hesitation, therefore, in proceeding to examine the grounds advanced by Mr. Blaine for desiring a modification of the convention.

The principles upon which the whole argument of the dispatch is founded are, as far as I am aware, novel in international law. If a discussion of the subject on the abstract grounds of public right were deemed useful or opportune, it would not be difficult to quote passages from publicists of acknowledged authority in both countries in support of this opinion. But for several reasons it will be better to treat the matter from the side of the practical consideration which it involves,

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without, of course, being precluded from reverting at any future stage, in case of need, to its other aspect.

Her Majesty's Government cannot admit that the analogy which it is sought to draw from the conduct of Great Britain in regard to the Suez Canal is correct or justified by the facts. They have made no attempt to fortify the island of Cyprus, or to establish it as an armed position on an important scale, though they have an undoubted right to do so. The fortress of Gibraltar, the island of Malta, and the military establishment at Aden came into the possession of England at a date long anterior to the time when the Mediterranean and the Red Sea could be regarded as a military route to India. For years afterwards the whole mass of reenforcements for India was sent by the way of Cape of Good Hope. Nor has any serious addition been made to the strength of these positions since the opening of the canal beyond what has been a natural consequence of the improvements in military science. Although no doubt well adapted by its situation to command the Straits of Bab-el-Mandeb, the Island of Perim has not in any real sense been made a fortified position. The fort and garrison on the island are, in fact, sufficient only to protect the light-house, which has been erected there for the general benefit of navigation, from possible attack by predatory Arabs.

The Navy Department of the United States must be well aware that Her Majesty's Government have never sought to bar or even to restrict the use of the canal by the naval forces of other countries, and that even during the recent war between Russia and Turkey, when the canal itself formed a portion of the territory of one of the belligerents, when the seat of conflict was close at hand, and when British interests might in many other respects have been nearly involved, they contented themselves with obtaining an assurance that the sphere of operations should not be extended to the canal.

Her Majesty's Government cordially concur in what is stated by Mr. Blaine as regards the unexampled development of the United States on the Pacific coast, and the capacity which they possess for further progress. That development has been watched in this country with admiration and interest, and will continue to be so regarded. But though in rapidity it may, and probably has, exceeded the most sanguine calculation, Her Majesty's Government cannot look upon it in the light of an unexpected event, or suppose that it was not within the view of the statesmen who were parties on either side to the Clayton-Bulwer treaty. The declarations of President Monroe and of his cabinet, in 1823 and 1824, whatever may be the view taken of their scope and bearing, and of the admissibility of the principles which they involve, or which it is sought to deduce from them, show at least that at that period—twenty-six years anterior to the treaty now under discussion—there was a clear prevision of the great future reserved to the Pacific coast. It is, in the opinion of Her Majesty's Government, an inadmissible contention that the regular and successful operation of causes so evident at the time, and in their nature so irrepressible, should be held to have completely altered the condition of affairs to the extent of vitiating the foundations of an agreement which cannot be supposed to have been concluded without careful thought and deliberation.

While recognizing to the fullest degree the extent to which the United States must feel interested in any canal which may be constructed across the Isthmus of Panama, Her Majesty's Government would be wanting in regard to their duty if they failed to point out that Great Britain has large colonial possessions, no less than great commercial interests, which render any means of unobstructed and rapid access from the Atlantic to

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the North and South Pacific Oceans a matter for her also of the greatest importance.

The development of these possessions and interests has steadily continued, possibly with less rapidity, but on a scale which has some relation even to that of the Pacific States. Her Majesty's Government do not wish to ignore the share which other nations have acquired in the commerce of Central and South America, nor to exclude from consideration the interest of those countries in any canal which may be made across the Isthmus. They are of opinion that such a canal as the waterway between two great oceans and between all Europe and Eastern Asia is a work which concerns not merely the United States or the American Continent, but the whole civilized world. This is a view which finds its expression in the VIth article of the treaty of 1850. Her Majesty's Government are as anxious as that of the United States that, while all nations should enjoy their proper share in the benefits to be expected from the undertaking, no single country should acquire a predominating influence or control over such a means of communication; and they will not oppose or decline any discussion for the purpose of securing on a general international basis its universal and unrestricted use.

With all deference to the considerations which have prompted the proposals made in Mr. Blaine's dispatch, Her Majesty's Government cannot believe that they would promote this object or be beneficial in themselves. The relations of the United States with the European powers are fortunately of a nature to give rise to no feelings of suspicion or alarm. The general tendency of their foreign policy gives good promise that they will so continue. But if provision is to be made on one side for a different state of affairs, it must be expected that the course thus indicated will find its natural and logical counterpart on the other. Her Majesty's Government can conceive no more melancholy spectacle than a competition among the nations holding West Indian possessions, and others on the Central and South American Continent, in the construction of fortifications to obtain the command over the canal and its approaches, in the event of occasion arising for such a measure. They cannot believe that it would be agreeable or convenient to any South American state through which the canal may pass to find itself called upon to admit a foreign power to construct and garrison on its territory a succession of fortresses of increasing magnitude, designed to oppose such attempts, even though that foreign power be a neighboring one and situated upon the same continent. And when the claim to do this is accompanied by a declaration that the United States will always insist on treating the water-way which shall unite the two oceans "as part of her coast line," it is difficult to imagine that the states to which the territory lying between that water-way and the United States belongs can practically retain as independent a position as that which they now enjoy.

These are the consequences which, in the conviction of Her Majesty's Government, would almost certainly follow from a claim on the part of the United States to assume the supreme authority over the canal and all responsibility for its control. Her Majesty's Government hold, on the contrary, that the principles which guided the negotiators of the convention of 1850 were intrinsically sound, and continue to be applicable to the present state of affairs. Their wish would be that those principles should receive the practical development which was contemplated at the time; and that effect should be given to that portion of the treaty which provides that the contracting parties shall invite all other states with whom they have friendly intercourse to enter into similar stipulations with them.

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A certain amount of progress was made in this direction by the conclusion of conventions with Honduras and Nicaragua by Great Britain in 1856 and 1860, and by the United States in 1864 and 1867, and by Nicaragua with France in 1859, with the object of upholding the general principles inserted in the treaty. During the period when there were still matters to regulate with respect to Grey Town, the Bay Islands, the frontier of British Honduras, and the protection of the Mosquito Indians, and when the construction of a canal still seemed a contingency more or less doubtful and remote, it was not strange that the engagement to address other powers should have been allowed to remain dormant; but the project of the canal has now assumed sufficient shape to render such an application reasonable and pertinent.

Her Majesty's Government believe that the extension of an invitation to all maritime states to participate in an agreement based on the stipulations of the convention of 1850 would obviate any objection that may possibly be raised against it as not being adequate in its present condition for the purpose for which it was designed. This course formed the basis of Mr. Fish's proposal to Dr. Cardenas, the Nicaraguan minister, in 1877; and Her Majesty's Government would gladly see the United States again take the initiative in an invitation to the powers, and will be prepared either to join it or to support and indorse it in the way that may be found most fitting and convenient, provided it does not conflict in any way with the Clayton-Bulwer treaty.

You are authorized to read this dispatch to the Secretary of State, and to give him a copy of it if he should desire it.

I am, &c.,

GRANVILLE.

The Hon. LIONEL S. S. WEST.

75.—*Lord Granville to Mr. West.*

No. 8. FOREIGN OFFICE, *January 14, 1882.*

SIR: In my dispatch 296 of the 31st ultimo I have forwarded to you a copy of a dispatch from Mr. Blaine to the United States minister at this court, containing further observations in support of his arguments and proposal for a modification of the treaty between this country and the United States of the 19th of April, 1850. In this dispatch Mr. Blaine gives extracts from the correspondence which passed between the two governments between 1856 and 1858, in consequence of questions that arose as to the construction to be placed on certain provisions of the treaty. Mr. Blaine seeks to establish from these extracts that "the vexatious and imperfect character of the treaty has been repeatedly recognized on both sides;" and he adds that the present proposal of the United States Government "is to free it from those embarrassing features, and to leave it, as its framers intended it should be, a full and perfect settlement, for all time, of all possible issues between the United States and Great Britain with regard to Central America."

The correspondence in question was laid before Parliament in 1860, and the principal papers included in it have also been published in Hertslet's State Papers.* A reference to the context of the passages quoted by Mr. Blaine will be necessary in order to appreciate the character which Mr. Blaine has attributed to them.

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* Vol. xl, p. 953; xli, p. 757; xlii, p. 153; xlvi, p. 244; xlvii, p. 661; xlviii, p. 630; L, p. 126.

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In cases where the details of an international agreement have given rise to difficulties and discussions to such an extent as to cause the contracting parties, at one time, to contemplate its abrogation or modification as one of several possible alternatives, and where it has yet been found preferable to arrive at a solution as to those details rather than to sacrifice the general basis of the engagement, it must surely be allowed that such a fact, far from being an argument against that engagement, is an argument distinctly in its favor. It is equally plain that either of the contracting parties which had abandoned its own contention for the purpose of preserving the agreement in its entirety would have reason to complain if the differences which had been settled by its concession were afterwards urged as a reason for essentially modifying those other provisions which it had made this sacrifice to maintain. That both these arguments apply in the present instance a brief review of the correspondence will, I think, suffice to show.

The treaty of 1850 was concluded (as is declared in the VIIIth Article) with the desire "not only to accomplish a particular object, but also to establish a general principle" in regard to the protection, by treaty stipulations, of any practical communications, whether by canal or railway, across the isthmus which connects North and South America.

The preamble and first article of the treaty run as follows:

Her Britannic Majesty and the United States of America, being desirous of consolidating the relations of amity which so happily subsist between them, by setting forth and fixing in a convention their views and intentions with reference to any means of communication by ship-canal, which may be constructed between the Atlantic and Pacific Oceans, by the way of the river St. Juan de Nicaragua, and either or both of the lakes of Nicaragua or Managua, to any port or place on the Pacific Ocean; * * *

ART. I. The Governments of Great Britain and the United States hereby declare that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said ship-canal; agreeing that neither will ever erect or maintain any fortifications commanding the same, or in the vicinity thereof, or occupy, or fortify, or colonize, or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America; nor will either make use of any protection which either affords, or may afford, or any alliance which either has, or may have, to or with any state or people, for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America, or of assuming or exercising dominion over the same. Nor will Great Britain or the United States take advantage of any intimacy, or use any alliance, connection, or influence that either may possess with any state or government through whose territory the said canal may pass, for the purpose of acquiring or holding, directly or indirectly, for the subjects or citizens of the one, any rights or advantages in regard to commerce or navigation through the said canal which shall not be offered, on the same terms, to the subjects or citizens of the other.

Soon after the signature of the treaty various discussions arose as to the interpretation to be put upon those clauses which debarred either of the contracting parties from occupying, fortifying, or colonizing, or assuming or exercising any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America, &c. Great Britain being at the time in possession of Ruatan and other islands off the coast of Honduras, and having a protectorate over the Mosquito Indians located on the coast of Nicaragua, a lengthened correspondence arose as to the effect to be given to the treaty in this respect, and also as to the boundary of British Honduras. A treaty was eventually signed by Lord Clarendon and Mr. Dallas for the settlement of the various questions at issue on the 17th October, 1856; but this agreement was not received with favor by the United States Senate, and the incoming government of President Buchanan, who had acceded to office in March, 1857, declined to confirm it without certain modifications. To these the British Government proposed further amendments, which were not at that time

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deemed acceptable by that of the United States, and the treaty was never formally ratified.

To show how far this part of the discussion belonged in some of its features to a state of affairs that is now past, one of the objections taken by General Cass to the treaty in its last amended form was that it involved a recognition by the United States of a treaty between Great Britain and Honduras for the cession of the Bay Islands to the latter country, in which it was stipulated that slavery should not at any time be permitted to exist there. General Cass stated that "a treaty with such a provision would never be recognized by a United States Senate." (Lord Napier to Lord Clarendon, May 3, 1857.)

I now proceed to examine some of the extracts given in Mr. Blaine's dispatch.

The first paper quoted is one from Lord Napier to the Earl of Clarendon, dated the 12th March, 1857.

The only passage quoted is as follows:

General Cass then passed some reflections on the Clayton-Bulwer treaty; he had voted for it, and in doing so he believed that it abrogated all intervention on the part of England in the Central American territory. The British Government had put a different construction on the treaty, and he regretted the vote he had given in its favor.

But the dispatch goes on to say:

He did not, however, pretend that the British Government should now unconditionally abandon the Mosquitos, with whom they had relations of an ancient date; it was just and consistent with the practice of the United States that those Indians should be secured in the separate possession of lands, the sale of which should be prohibited, and in the enjoyment of rights and franchises, though in a condition of dependency and protection. The British Government had already removed one impediment to the execution of the Bulwer-Clayton treaty by the cession of their claims on Ruatan; two difficulties now remained—the frontier of Belize, and the delimitation and settlement of the Mosquito tribe. If the frontier could be defined, and if the Mosquitos could be placed in the enjoyment of their territory by treaty between Great Britain and Nicaragua, in which the concessions and guarantees of the latter in favor of the Indians should be associated with the recognition of the sovereignty of Nicaragua—so I understood the general—*then the Bulwer-Clayton treaty might be a permanent and satisfactory settlement between the contracting parties;* the United States desiring nothing else than an absolute and entire neutrality and independence of the Central American region, free from the exercise of any exclusive influence or ascendency whatever.

The next quotation is from another dispatch of Lord Napier, dated the 6th May, 1857, and the passage given runs thus:

The President denounced the Clayton-Bulwer treaty as one which had been fraught with misunderstanding and mischief from the beginning; it was concluded under the most opposite constructions by the contracting parties. If the Senate had imagined that it could obtain the interpretation placed upon it by Great Britain, it would not have passed. If he had been in the Senate at the time, that treaty never would have been sanctioned.

But President Buchanan went on to say:

With reference to arbitration (which Lord Napier had only thrown in as a suggestion of his own), he could not give any opinion at present. The President also inveighed against the excess of treaties, affirming that they were more frequently the cause of quarrel than of harmony, and that if it were not for the interoceanic communications he did not see there was any necessity for a treaty respecting Central America at all.

It seems, therefore, that the President's condemnation of the Clayton-Bulwer treaty was principally founded on the construction placed upon it by Great Britain at the time, and was also in some measure explained by his objections to treaties in general, but that he admitted that the question of the interoceanic connection made such an agreement necessary.

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Mr. Blaine then quotes a note from Mr. Cass to Lord Napier, of the 29th May, 1857, as follows:

The Clayton-Bulwer treaty, concluded in the hope that it would put an end to the differences which had arisen between the United States and Great Britain concerning Central American affairs, had been rendered inoperative in some of its most essential provisions by the different constructions which had been reciprocally given to it by the parties. And little is hazarded in saying that, had the interpretation since put upon the treaty by the British Government, and yet maintained, been anticipated, it would not have been negotiated under the instructions of any Executive of the United States, nor ratified by the branch of the government intrusted with the power of ratification.

But how does General Cass continue? He goes on to say:

A protracted discussion, in which the subject was exhausted, failed to reconcile the conflicting views of the parties; and, as a last resort, a negotiation was opened for the purpose of forming a supplementary treaty which should remove, if practicable, the difficulties in the way of their mutual good understanding, and leave unnecessary any further discussion of the controverted provisions of the Clayton-Bulwer treaty. It was to effect this object that the Government of the United States agreed to open the negotiations which terminated in the treaty of the 17th October, 1856, and though the provisions of that instrument, even with the amendments proposed by the Senate, were not wholly unobjectionable either to that body or to the President, still, *so important did they consider a satisfactory arrangement of this complicated subject*, that they yielded their objections, and sanctioned, by their act of ratification, the convention as amended. It was then transmitted to London for the consideration of Her Britannic Majesty's Government, and, having failed to meet its approbation, has been returned unratified. The parties are thus thrown back upon the Bulwer-Clayton treaty, with its disputed phraseology and its conflicting interpretations; and, after the lapse of seven years, not one of the objects connected with the political condition of Central America which the United States had hoped to obtain by the arrangement has been accomplished.

It was not, therefore, to the principles or basis of the arrangement (the importance of which was fully recognized), but to the unfortunate phraseology of a single portion of the treaty, that objection was taken.

Mr. Blaine then refers to Sir W. Gore Ouseley's mission, the object of which was to settle the points at issue, in a manner practically satisfactory to the United States, by independent negotiations with the Central American States, after first communicating with the government at Washington. Mr. Blaine quotes a passage from a letter of General Cass to Lord Napier of the 20th October, 1857, as follows:

I have thus endeavored to meet the frank suggestions of your lordship by restating, with corresponding frankness, the general policy of the United States with respect to the governments and the interoceanic transits of Central America; but since your lordship has referred to the Clayton-Bulwer treaty of 1850, as contemplating a "harmonious course of action and counsel between the contracting parties in the settlement of the Central American interests," you will pardon me for reminding your lordship that the differences which this treaty was intended to adjust between the United States and Great Britain still remain unsettled, while the treaty itself has become the subject of new and embarrassing complications.

It will be useful to refer to the previous portion of this note to show what was the statement of the "general policy of the United States" thus referred to, and how far that policy corresponds with Mr. Blaine's present proposals. The note begins thus:

I have the honor to receive your lordship's communication of the 9th instant, in reference to the existing relations between Nicaragua and Costa Rica, and have submitted it to the consideration of the President.

These relations have attracted the earnest attention of the President, not only from the importance of the San Juan transit to the commerce of the world, but from the interest which is naturally felt by the United States in the neighboring republics of this continent. The President has witnessed, therefore, the restoration of peace to Nicaragua and Costa Rica with the highest gratification; and he sincerely hopes that it may not again be interrupted, either by the calamity of civil war or the invasion of their territory from other countries. Their security and welfare would undoubtedly

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be promoted by a just and friendly settlement between them of their mutual boundaries and jurisdiction; and I need hardly add that such an adjustment would be viewed with satisfaction by the United States. This government, however, has never admitted the pretensions of Costa Rica to an equal control with Nicaragua of the San Juan River, but has regarded the sovereignty of the river, and consequently of the interoceanic transit by that route, as rightfully belonging to the Republic of Nicaragua.

A similar view of the question appears to have been recognized by Great Britain; and, whatever may be the rights of Costa Rica with respect to the free passage of her own products by the river to the ocean, it is better, probably, that what has been thus acquiesced in, and has led, moreover, to important contracts and responsibilities, should not now be disturbed. But under any circumstances the commercial nations of the world can never permit the interoceanic passages of the isthmus to be rendered useless for all the great purposes which belong to them in consequence of the neglect or incapacity of the states through whose territories they happen to run. *The United States, as I have before had occasion to assure your lordship, demand no exclusive privileges in these passages,* but will always exert their influence to secure their free and unrestricted benefits, both in peace and war, to the commerce of the world.

And in a later note to Lord Napier, of the 8th November, 1858, General Cass states with still greater clearness the object with which the treaty was concluded, and the grounds on which the difference between the two governments had arisen. He says:

Since the announcement by your lordship, in October, 1857, of Sir William Ouseley's special mission, the President has awaited, not so much any new proposition for the adjustment of the Central American questions as the statement in detail, which he had been led to expect, of the method by which Sir William Ouseley was to carry into effect the previous proposition of the British Government. To make this plain, your lordship will pardon me for making a brief reference to what has occurred between the two governments in respect to Central America since the ratification of the Clayton-Bulwer treaty of 1850.

While the declared object of that convention had reference to the construction of a ship-canal by the way of San Juan and the Lakes of Nicaragua and Managua, from the Atlantic to the Pacific Ocean, *yet it avowed none the less plainly a general principle in reference to all practicable communications across the isthmus, and laid down a distinct policy by which the practical operation of this principle was likely to be kept free from all embarrassment. The principle was that the interoceanic routes should remain under the sovereignty of the states through which they ran, and should be neutral and free to all nations alike. The policy was that, in order to prevent any government outside of those states from obtaining undue control or influence over those interoceanic transits, no such nation should erect or maintain any fortifications commanding the same, or in the vicinity thereof, or should "occupy, or fortify, or colonize, or assume, or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America."* So far as the United States and Great Britain were concerned, those stipulations were expressed in unmistakable terms; and in reference to other nations, it was declared that the "contracting parties in this convention engage to invite every state with which both or either have friendly intercourse to enter into stipulations with them similar to those which they have entered into with each other.

At that time the United States had no possessions whatever in Central America, and exercised no dominion there. In respect to this government, therefore, the provisions of Article I of the treaty could operate only as a restriction for the future; but Great Britain was in the actual exercise of dominion over nearly the whole eastern coast of that country, and, in relation to her, this article had a present as well as a prospective operation. She was to abandon the occupancy which she already had in Central America, and was neither to make acquisitions, or erect fortifications, or exercise dominion there in the future. In other words, she was to place herself in the same position with respect to possessions and dominion in Central America which was to be occupied by the United States, and which both of the contracting parties to the treaty engaged that they would endeavor to induce other nations to occupy.

This was the treaty as it was understood and consented to by the United States, and this is the treaty as it is still understood by this government.

He then recapitulates the discussions and abortive negotiations which had ensued in consequence of the different interpretations put upon the treaty by the two governments; and, after criticising and expressing disappointment at the last communication made to him by Lord Napier, he concludes:

It is of no small consequence either to the United States or Great Britain that these Central American controversies between the two countries should be forever

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closed. On some points of them, and, I have been led to hope, on the general policy which ought to apply to the whole isthmian region, they have reached a common ground of agreement. The neutrality of the inceroceanic routes, and their freedom from the superior and controlling influence of any one government; the principles upon which the Mosquito protectorate may be arranged, with justice alike to the sovereignty of Nicaragua and the Indian tribes; the surrender of the Bay Islands, under certain stipulations for the benefit of trade and the protection of their British occupants; and the definition of the boundaries of British Belize; about all these points there is no apparent disagreement, except as to the conditions which shall be annexed to the Bay Islands' surrender, and as to the limits which shall be fixed to the settlements of Belize. Is it possible that, if approached in a spirit of conciliation and good feeling, these two points of difference are not susceptible of a friendly adjustment? To believe this would be to underestimate the importance of the adjustment, and the intelligent appreciation of this importance which must be entertained by both nations. What the United States want in Central America, next to the happiness of its people, is the security and neutrality of the interoceanic routes which lead through it. This is equally the desire of Great Britain, of France, and of the whole commercial world. If the principles and policy of the Clayton-Bulwer treaty are carried into effect, this object is accomplished. When, therefore, Lord Malmesbury invites new overtures from this government upon the idea that it has rejected the proposal embraced in Sir William Ouseley's mission for an adjustment of the Central American questions by separate treaties with Honduras, Nicaragua, and Guatemala, upon terms substantially according with the general tenor of the American interpretation of the treaty, I have to reply to his lordship that this very adjustment is all that the President has ever desired, and that, instead of having rejected that proposal, he had expressed his cordial acceptance of it, so far as he understood it, and had anticipated from it the most gratifying consequences.

Further, in a dispatch to Mr. Lamar of July 25, 1858, subsequently communicated to Lord Malmesbury by Mr. Dallas on the 29th April, 1859, General Cass says:

These great avenues of intercommunication are vastly interesting to all commercial powers, and all may well join in securing their freedom and use against those dangers to which they are exposed from aggressions or outrages, originating within or without the territories through which they pass.

It is difficult to conceive a more distinct statement of adherence to the general principles of the Clayton-Bulwer arrangement, or a more positive disclaimer of the policy involved in Mr. Blaine's present proposals, than is contained in the passages I have just quoted.

I return, however, to the extracts given in Mr. Blaine's dispatch. Mr. Blaine alludes to an important interview which Lord Napier had with President Buchanan on the 19th October, 1857, in which Lord Napier asked that, pending the negotiation intrusted to Sir W. Gore Ouseley, no proposal to annul the Clayton-Bulwer treaty should be sanctioned or encouraged by the President or members of the United States Government. Lord Napier's account of the President's language is as follows:

The President commenced his observations by referring to the Clayton-Bulwer treaty as a fruitful source of misunderstanding between the contracting parties. Without that treaty the United States and Great Britain might long since have cooperated for the welfare of Central America. That treaty had never been acceptable to the people of the United States, and would not have obtained a vote in the Senate had the least suspicion existed of the sense in which it was to be construed by Great Britain; yet, if it were now the intention of Her Majesty's Government to execute it according to the American interpretation, that was as much as we could insist upon.

And after reporting what passed at the interview with regard to the Bay Islands and Honduras, Lord Napier continued:

I then went on to animadvert upon the danger of some movement in the approaching Congress which would interfere with the contemporary negotiation of Sir William Ouseley, remarking that should the President, in his message, allude to the position of the two countries in reference to Central America, and if, in consequence of his excellency's reflections, a resolution should be proposed for the abrogation of the Clayton-Bulwer treaty, such a step would not only frustrate the purposes of Sir William Ouseley's mission, but would have a calamitous influence on the future relations of

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England and America. It would, therefore, be highly gratifying to me to be enabled to assure your lordship that, pending the negotiation intrusted to Sir William Ouseley, no proposal to annul the treaty would be sanctioned or encouraged by his excellency or by the members of his government.

The President stated, in reply, that it was certainly his intention to give an account in his message of all that had passed between the two governments respecting the Dallas-Clarendon treaty. He appeared to intimate that the effect of such a narrative would be to place the conduct of Great Britain in an unfavorable light, and he added that the passage in which he commented upon these transactions was already prepared; but his excellency went on to affirm, with emphasis, that if the resolutions of Her Majesty's Government were such as I had related, if they really meant to execute the Clayton-Bulwer treaty according to the American interpretation, and would, before the meeting of Congress, make some communication to him in that sense, such as he could use, he would cancel what he had written and insert another passage referring to the mission of Sir William Ouseley, and that "nothing would give him greater pleasure than to add the expression of his sincere and ardent wish for the maintenance of friendly relations between the two countries."

His excellency also distinctly declared that, under the circumstances here described, no attempt against the Clayton-Bulwer treaty in Congress would have any countenance from him whatever. To him it was indifferent whether the concession contemplated by Her Majesty's Government were consigned to a direct engagement between England and the United States, or to treaties between the former and the Central American republics; the latter method might, in some respects, be even more agreeable to him, and he thought it would be more convenient to Her Majesty's Government, who might, with greater facility, accede to the claims of the weaker party.

I pass over some passages given in Mr. Blaine's dispatch which seem to call for no remark, and I would only observe that the proposal for arbitration alluded to in Lord Napier's note to General Cass of February 17, 1858, applied only to the controverted points in the treaty, and not to the whole instrument.

Mr. Blaine refers to a conversation with General Cass, reported by Lord Napier in a dispatch of the 22d March, 1858, in which reference was made to the idea of an abrogation of the treaty. It may be well to give a larger extract of this dispatch, because, although Lord Napier's remarks were stated to be personal and unofficial, they show his view of the form which such an abrogation should take. He says:

I have, accordingly, on two occasions, informed General Cass that if the Government of the United States be still of the same mind, and continue to desire the abrogation of the treaty of 1850, it would be agreeable to Her Majesty's Government that they should insert a proposal to that effect in their reply to my note respecting arbitration, and to that in which I explained the character and motives of the mission intrusted to Her Majesty's commissioner in Central America.

Some conversation ensued regarding the manner in which the dissolution of the treaty should be effected, and the condition by which it might be accompanied, and on these topics I have held the following language, premising that the views expressed were altogether spontaneous and personal, for I had no information of the intentions of Her Majesty's Government beyond the bare fact that they would entertain a proposal to cancel the engagements of 1850 emanating from the United States.

I stated that, in my opinion, the treaty in question could only be repealed by a new treaty in the usual forms, and that it might be desirable that such a treaty should not be restricted to a single article annulling its predecessor. Both for considerations of decency and policy I advocated the insertion of stipulations involving an expression of a common policy in Central America, and the disavowal of any exclusive or monopolizing projects on either side. I said that I thought a treaty might be framed of three articles.

The first should declare the desire of the contracting parties to encourage and protect the organization of transit routes in the interoceanic region, and bind those parties never to negotiate for any rights or privileges of transit with the Central American States of a preferential or exclusive character, to which other nations might not, by negotiation, be equally admitted, establishing thus the principle of an equal enjoyment of those avenues of trade for all the countries of the world.

The second article might recognize the jurisdiction of the transit route by the San Juan River as being vested in the government of Nicaragua. This had been already avowed by the United States in a treaty negotiated with that republic. It had not been definitely affirmed by Great Britain, and might seem to clash with the claims of the King of Mosquitia to territorial possession or authority in those parts. I thought,

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however, that in regard to the views lately expressed by Her Majesty's Government in the course of recent negotiations, in consideration of the necessity of obtaining a suitable treaty with Nicaragua, and for the purpose of placing themselves in harmony with the course pursued by the United States, Her Majesty's Government might, on this head, accede to an article which would practically restrict their protectorate in Mosquitia, and prevent the importation of any interference on their part with the territory traversed by the river, and. therefore, by the transit route.

Finally, I suggested that Article III of the treaty should simply declare the provisions of the treaty of 1850 to be void and of no effect. I added that the question of future territorial acquisition in Central America would thus be thrown open to the United States; that Her Majesty's Government, on the other hand, would retain the colony of Honduras in the proportions which might be given to it by treaty arrangements with Guatemala, and that the Bay Islands would remain attached to the British Crown. Indeed, I affirmed, still as a personal opinion, but of the most positive character, that in case of the dissolution of the Clayton-Bulwer treaty, the Bay Islands would not be relinquished by Her Majesty's Government. I felt bound to make this statement, having observed in some quarters an impression that Her Majesty's Government might be disposed not only to annul the treaty, thus opening a path for the eventual annexation of the isthmus to the Federal Union, but to give up the Bay Islands as well; a notion altogether unfounded in any intimation which has hitherto reached me from the Foreign Office, and which could not be reconciled, in my opinion, to the interests of England.

Lord Napier adds that he was most careful to remark throughout that the opinions he enunciated with reference to the treaty were exclusively his own.

Mr. Blaine gives only a very short extract from Lord Malmesbury's dispatch in reply of the 8th April, 1858. It will be desirable to quote it more at length. Lord Malmesbury says:

Her Majesty's Government, if the initiative is still left to them by the unwillingness of the United States themselves to propose abrogation, desire to retain full liberty as to the manner and form in which any such proposal shall be laid on their behalf before the Cabinet at Washington; but without pronouncing any decided opinion at the present moment, I think it right to point out to your lordship that the effect of such an article as that suggested in your dispatch, as the second, might be to perpetuate an entanglement with the government of the United States, and to place that government in a position to question or control the free action of Her Majesty's Government in everything that relates to Central America. The Clayton-Bulwer treaty has been a source of unceasing embarrassment to this country, and Her Majesty's Government, if they should be so fortunate as to extricate themselves from the difficulties which have resulted from it, will not involve themselves, directly or indirectly, in any similar difficulties for the future.

Her Majesty's Government would have no objection to enter with the United States into a self-denying engagement such as that suggested in your first article, by which both parties should renounce all exclusive advantage in the use of any of the interoceanic routes, and should bind themselves, each to the other, not to interfere with free transit. Such an article would be a suitable substitute for the Clayton-Bulwer treaty, for it would secure, as regards the contracting parties, the avowed object of that treaty—the freedom of interoceanic communication.

But beyond this Her Majesty's Government, as at present advised, are not prepared to contract any engagement as a substitute for the Clayton-Bulwer treaty, and from the abrogation of that compact, if it should take place, they will hold themselves as free to act in regard to Central America in the manner most conducive to the advancement of British interests and the fulfillment of British obligations as if the treaty had never been concluded.

Your lordship was, therefore, perfectly right in using decided language such as that reported in your dispatch respecting the Bay Islands; and whenever the subject of the abrogation of the Clayton-Bulwer treaty is mooted in your presence, you will make it perfectly clear to the Government of the United States that to abrogate the treaty is to return to the *status quo ante* its conclusion in 1850; that Her Majesty's Government have no kind of jealousy respecting American colonization in Central America, which, indeed, it would help to civilize; and that we neither ask nor wish for any exclusive privileges whatever in those regions.

These, then, were the terms upon which Her Majesty's Government were alone prepared, if at all, to consider the abrogation of the Clayton-Bulwer treaty. And such an alternative was deprecated by General Cass in a note to Lord Napier to the 6th April, 1858, in which, while

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declining the proposal of arbitration on the disputed points of the treaty, he alluded to a personal expression of opinion he had given in favor of an unconditional renunciation of the treaty, and called attention to the serious consequences which might result from its dissolution if no provision were made at the same time for adjusting the questions which led to it. He then concluded with the passage quoted by Mr. Blaine, to the effect that "if the President does not hasten to consider now the alternative of repealing the treaty of 1850 it is because he does not wish prematurely to anticipate the failure of Sir William Ouseley's mission, and is disposed to give a new proof to Her Majesty's Government of his sincere desire to preserve the amicable relations which now happily subsist between the two countries."

But subsequent events make it unnecessary to dwell further upon this part of the discussion, for the question was settled by the practical accomplishment of that which the United States Government regarded as the most satisfactory conclusion.

It is here that the extracts and account of the negotiation given by Mr. Blaine come to an end at a point when the most important episode commences. The continuation of the correspondence shows that on the 30th April, 1859, a treaty was concluded between Great Britain and Guatemala for the settlement of the question of the boundary of Belize; that on the 28th November, 1859, another treaty was concluded between this country and Honduras for the transfer of the Bay Islands to that republic, as well as for the settlement of other questions relating to the Mosquito Indians and the claims of British subjects, including the withdrawal of the British protectorate, and that on the 28th January, 1860, a third treaty was concluded between this country and Nicaragua, also with reference to the Mosquito Indians and the claims of British subjects.

Copies of these three treaties were officially communicated to the United States Government, with the expression of a hope on the part of Her Majesty's Government that they would "finally set at rest the questions respecting the interpretation of the Clayton-Bulwer treaty, which had been the subject of so much controversy between this country and the United States."

And in his message to Congress of the 3d December, 1860, President Buchanan says the dangerous questions arising from the Clayton-Bulwer treaty "have been amicably and honorably adjusted. The discordant constructions of the Clayton-Bulwer treaty between the two governments, which at different periods of the discussion bore a threatening aspect, have resulted *in a final settlement entirely satisfactory to this government.*"

I have been forced to give the above extracts at considerable length, and I refrain from adding other passages which would tend to illustrate and confirm them. A perusal of them, however, will, I think, suffice to show—

1. That the differences which arose between the two governments in regard to the treaty, and which occasioned at one time considerable irritation, but which have long since been happily disposed of, did not relate to the general principles to be observed in regard to the means of interoceanic communication across the isthmus, but had their origin in a stipulation which Mr. Blaine still proposes in great part to maintain. He wishes every part of the treaty in which Great Britain and the United States agree to make no acquisition of territory in Central America to remain in full force, while he desires to cancel those portions of the treaty which forbid the United States fortifying the canal and

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holding the political control of it in conjunction with the country in which it is located.

2. That the declarations of the United States Government during the controversy were distinctly at variance with any such proposal as that just stated. They disclaimed any desire to obtain an exclusive or preferential control over the canal. Their sole contention was that Great Britain was bound by the treaty to abandon those positions on the mainland or adjacent islands which in their opinion were calculated to give her the means of such a control. Nor did they in any way seek to limit the application of the principles laid down in the treaty so as to exclude Colombia nor Mexican territory, as Mr. Blaine now suggests, nor urge that such application would be inconsistent with the convention between the United States and New Granada of 1846. On the contrary, they were ready to give those principles their full extension.

3. That at a time when the British Government had been induced by the long continuance of the controversy to contemplate the abrogation of the treaty, they were only willing to do so on the condition of reverting to the *statu quo ante* its conclusion in 1850; a solution which was at that time possible, though, as the United States Government justly pointed out, it would have been fraught with great danger to the good relations between the two countries, but which is now rendered impossible by the subsequent events.

4. That a better and more conciliatory conclusion, which for twenty years has remained undisputed, was effected by the independent and voluntary action of Great Britain. The points in dispute were practically conceded by this country, and the controversy terminated in a manner which was declared by President Buchanan to be amicable and honorable, resulting in a final settlement entirely satisfactory to the Government of the United States.

You are authorized to read this dispatch to the United States Secretary of State, and to offer him a copy of it if he should desire, in the same manner in which a copy of Mr. Blaine's dispatch was offered to me.

I have, &c.,

GRANVILLE.

The Hon. L. S. S. West.

Mr. Frelinghuysen to Mr. Lowell.

No. 368.] Department of State,
Washington, D. C., May 8, 1882.

76.—*Mr. Lowell to Mr. Frelinghuysen.*

No. 376.] Legation of the United States,
London, June 1, 1882. (Received June 13.)

Sir: I have the honor to acknowledge the reception of your instruction No. 368, of the 8th of May last, stating the position of the Government of the United States in relation to questions growing out of

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the (so-called) Clayton-Bulwer treaty. It arrived on the 27th ultimo, when the members of the Government were leaving town for the Whitsuntide holidays. I have had no opportunity of seeing Lord Granville until yesterday, when I had an interview with him, by appointment, at the foreign office. I read the dispatch to him and left a copy of it with him, at his request, agreeably to your directions. I have already informed you of this by cable.

I have, &c., J. R. LOWELL.

[S. Ex. Doc. No. 26, 48th Congress, 1st session.]

Message from the President of the United States, transmitting, in response to the Senate resolution of the 18th instant, a report of the Secretary of State and accompanying papers relating to the treaty between the United States and Great Britain, signed April 19, 1850.

DECEMBER 19, 1883.—Read and ordered to lie on the table and be printed.

To the Senate of the United States:

I transmit herewith, in response to the Senate resolution of the 18th instant, a report of the Secretary of State and accompanying papers, relating to the treaty between the United States and Great Britain, signed April 19, 1850.

CHESTER A. ARTHUR.

EXECUTIVE MANSION,
Washington, December 19, 1883.

To the President:

The Secretary of State, to whom was referred the resolution of the Senate of the 18th instant, requesting the President, "if in his opinion it is not incompatible with the public interest, to furnish the Senate with copies of the correspondence in relation to the treaty between the United States and Great Britain, signed the 19th day of April, 1850, which has passed between the two Governments not heretofore communicated," has the honor to lay the accompanying correspondence before the President for transmission to the Senate in response to the resolution.

Respectfully submitted.

FREDK. T. FRELINGHUYSEN.

DEPARTMENT OF STATE,
Washington, December 19, 1883.

List of papers.

Lord Granville to Mr. We-t, December 30, 1882.
Mr. Frelinghuysen to Mr. Lowell, May 5, 1883.
Lord Granville to Mr. West, August 17, 1883.
Mr. Frelinghuysen to Mr. Lowell, November 22, 1883.

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1.—*Lord Granville to Mr. West.*

FOREIGN OFFICE, *December 30, 1882.*

SIR: You have already received, with my dispatch No. 186 of the 17th of June last, a copy of the dispatch addressed by Mr. Frelinghuysen to Mr. Lowell on the 8th May, by whom it was communicated to me on the 31st of that month, in which the views of the Government of the United States are expressed in great detail respecting the traditional continental policy of that Government, and the provisions of the Clayton-Bulwer treaty.

Her Majesty's Government have not failed to give their most careful consideration to the important questions discussed in Mr. Frelinghuysen's communication, and I now proceed to convey to you the following remarks upon some of the principal points.

You will have observed that three questions are raised by Mr. Frelinghuysen:

1. The meaning and effect of Article VIII of the Clayton-Bulwer treaty;

2. Whether such acts have been committed by Great Britain in British Honduras in violation of the treaty as would entitle the United States to denounce it; and

3. The proposed conclusion of a fresh agreement between the two countries, having for its object the retention and renewal of certain provisions of the Clayton-Bulwer treaty, and the definition of the distance from either end of the proposed canal beyond which captures might be made by belligerents in time of war.

As regards the first point, Mr. Frelinghuysen renews Mr. Blaine's contention, that the Clayton-Bulwer treaty had reference only to the interoceanic routes then in contemplation, and that Article VIII of that treaty must be read subject to the provisions of the earlier treaty of 1846 between the United States and New Granada, which, as he alleges, secures to the United States the sole protectorate of any route across the Isthmus of Panama.

Her Majesty's Government are unable to accept that view. The routes in contemplation at the date of the Clayton-Bulwer treaty were those by way of the river San Juan, and either or both of the lakes of Nicaragua and Managua; and Article I of the treaty no doubt applied only to those routes. By that article it was declared that neither the one nor the other of the high contracting parties would ever obtain or maintain for itself any exclusive control over any ship canal which might be constructed between the Atlantic and Pacific oceans by the way of the river St. Juan de Nicaragua and either or both of the lakes of Nicaragua or Managua, to any port or place on the Pacific Ocean.

But by Article VIII the high contracting parties, after declaring that they not only desired in entering into the convention to accomplish a particular object, but also to establish a general principle, agreed—

> To extend their protection by treaty stipulations to any other practicable communications (that is to say, other than those mentioned in Article I), whether by canal or railway, across the isthmus which connects North and South America, and especially to the interoceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by the way of Tehuantepec or Panama.

This is in effect an agreement that all the prior provisions with reference to the protection of the particular ship canal then in contem-

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plation shall in principle be applied to any interoceanic ship canal thereafter constructed. The contention of Mr. Frelinghuysen that Article VIII "relates only to those projects *now* (1850) proposed to be established" is opposed to the terms of the article, which expressly refers to any communications other than those mentioned in Article I, and *especially* to those then projected. It is also contended that Article VIII "contemplates some future treaty stipulation." But it is none the less an agreement because its application to any canal thereafter made is to be carried into effect by treaty stipulations.

The general principle established by Article VIII of the Clayton-Bulwer treaty was that all communications by canal or railway between the Atlantic and Pacific oceans, "across the isthmus which connects North and South America," should be established on the broad basis that they should be for the general benefit of mankind, and that no country should, on any pretense whatever, reap an advantage which was not enjoyed by all who should be willing to extend their protection to such enterprises.

This "general principle" was not only fully admitted by General Cass in his note to Lord Napier of the 20th October, 1857, as pointed out to you in my dispatch of the 14th January last, and in which General Cass said that "the United States demanded no exclusive privileges in the interoceanic passages of the Isthmus," but would always exert their influence to secure their free and unrestricted benefits both in peace and war to the commerce of the world, but it was actually carried out both by Great Britain and the United States in their subsequent treaties with Honduras and Nicaragua, in which they respectively agreed to extend their protection and guarantee to the interoceanic communications therein mentioned, in order to insure equal treatment to all nations across those public highways, and to prevent the imposition of unfair discriminating duties in matters of commerce or of unequal transit dues.

I refer to the treaties between Great Britain and Honduras of the 27th of August, 1856, and between Great Britain and Nicaragua of the 11th February, 1860, and to the treaties between the United States and Honduras of the 4th July, 1864, and between the United States and Nicaragua of the 21st June, 1867, which show that Article VIII of the Clayton-Bulwer treaty had reference to the protection and guarantee to be extended to *all* interoceanic communications, and not to any one particular scheme or schemes.

Moreover, the United States, in their treaty with Nicaragua, not only "agreed to extend their protection to all such routes of communication (between the Atlantic and Pacific oceans), and to guarantee the neutrality and innocent use of the same," but did further "agree to employ their influence with other nations to induce them to guarantee such neutrality and protection."

The Government of the United States having therefore, since the conclusion of its treaty of 1846 with New Granada, entered into treaties of a more recent date with Great Britain and other powers, carrying out the "general principle" established by the Clayton-Bulwer treaty, which is opposed to all idea of exclusive advantages in any interoceanic communication which may be constructed, they can hardly now appeal, without inconsistency, to their treaty with New Granada, as giving them exclusive rights of protection over the projected canal across the Isthmus of Panama.

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Moreover, there is nothing in the terms of the treaty of 1846 which confers on the United States any exclusive right of protection, or which is inconsistent with the joint protection of Great Britain and the United States; and in the view, therefore, of Her Majesty's Government, the guarantee given by the United States to New Granada in the treaty of 1846 meant no more than the guarantee given by the United States, jointly with this country, in the Clayton-Bulwer treaty of 1850, or the guarantees given by this country, by France, and by the United States in their separate treaties with Honduras and Nicaragua.

I now pass to the second point raised by Mr. Frelinghuysen, namely, whether such acts have been committed by Great Britain in British Honduras in violation of the Clayton-Bulwer treaty as would entitle the United States to denounce it. It is alleged that Great Britain has violated, and continues to violate, its provisions by exercising sovereignty over British Honduras, and treating that territory as a British colony.

On this point it is important to refer to the following correspondence on the subject which took place at the time between Sir Henry Bulwer and Mr. Clayton.

On the 29th June, 1850, Sir H. Bulwer handed to Mr. Clayton the following declaration in writing:

In proceeding to the exchange of ratifications of the convention signed at Washington on the 19th April, 1850, between Her Britannic Majesty and the United States of America, relative to the establishment of a communication by ship canal between the Atlantic and Pacific oceans, the undersigned, Her Britannic Majesty's plenipotentiary, has received Her Majesty's instructions to declare that Her Majesty does not understand the engagements of that convention to apply to Her Majesty's settlement at Honduras, or to its dependencies. Her Majesty's ratification of the said convention is exchanged under the explicit declaration above mentioned.

Done at Washington the 29th day of June, 1850.

H. L. BULWER.

To this Mr. Clayton replied, on the 4th July, as follows:

DEPARTMENT OF STATE,
Washington, July 4, 1850.

SIR: I have received the declaration you were instructed by your Government to make to me respecting Honduras and its dependencies, a copy of which is herewith subjoined.

The language of article 1 of the convention concluded on the 19th day of April last, between the United States and Great Britain, describing the country not to be occupied, &c., by either of the parties, was, as you know, twice approved by your Government, and it was neither understood by them nor by either of us (the negotiators) to include the British settlement in Honduras (commonly called British Honduras, as distinct from the State of Honduras), nor the small islands in the neighborhood of that settlement, which may be known as its dependencies. To this settlement and these islands the treaty we negotiated was not intended by either of us to apply. The title to them it is now and has been my intention, throughout the whole negotiation, to leave as the treaty leaves it, without denying, affirming, or in any way meddling with the same, just as it stood previously.

The chairman of the Committee on Foreign Relations of the Senate, the Hon. William R. King, informs me that "the Senate perfectly understood that the treaty did not include British Honduras." It was understood to apply to, and does include, all the Central American States of Guatemala, Honduras, San Salvador, Nicaragua, and Costa Rica, with their just limits and proper dependencies. The difficulty that now arises seems to spring from the use, in our convention, of the term "Central America," which we adopted because Viscount Palmerston had assented to it, and used it as the proper term, we naturally supposing that on this account it would be satisfactory to your Government; but if your Government now intend to delay the exchange of ratifications until we shall have fixed the precise limits of Central America, we must defer further action until we have further information on both sides, to which at present we have no means of resort, and which it is certain we could not obtain before

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the term fixed for exchanging the ratifications would expire. It is not to be imagined that such is the object of your Government, for not only would this cause delay, but absolutely defeat the convention.

Of course no alteration could be made in the convention, as it now stands, without referring the same to the Senate; and I do not understand you as having authority to propose any alteration. But on some future occasion a conventional article, clearly stating what are the limits of Central America, might become advisable.

There is another matter, still more important, which the stipulations of the convention direct that we shall settle, but which you have no instructions now to determine, and I desire you to invite the attention of your Government to it: "The distance from the two ends of the canal within which vessels of the United States or Great Britain, traversing the said canal, shall in case of war between the contracting parties, be exempted from blockade, detention, or capture, by either of the belligerents." The subject is one of deep interest, and I shall be happy to receive the views of your Government in regard to it as soon as it may be convenient for them to decide upon it.

I avail, &c., JOHN M CLAYTON.

Sir H. Bulwer acknowledges the receipt of Mr. Clayton's dispatch, on the same day, in the following words:

BRITISH LEGATION, *July 4, 1850.*

SIR: I understand the purport of your answer to the declaration, dated the 29th June, which I was instructed to make to you on behalf of Her Majesty's Government, to be that you do not deem yourself called upon to mark out at this time the exact limits of Her Majesty's settlement at Honduras nor of the different Central American States, nor to define what or what are not the dependencies of the said settlement; but that you fully recognize that it was not the intention of our negotiation to embrace in the treaty of the 19th April whatever is Her Majesty's settlement at Honduras nor whatever are the dependencies of that settlement, and that Her Majesty's title thereto subsequent to the said treaty will remain just as it was prior to that treaty, without undergoing any alteration whatever in consequence thereof.

It was not the intention of Her Majesty's Government to make the declaration I submitted to you more than a simple affirmation of this fact, and consequently I deem myself now authorized to exchange Her Majesty's ratification of the treaty of the 19th April for that of the President of the United States.

I shall take the earliest opportunity of communicating to Her Majesty's Government the desire which you express to have determined the distance from the two ends of the canal within which the vessels of the United States or Great Britian traversing the said canal shall, in the case of war between the contracting parties, be exempted from blockade, detention, or capture by either of the belligerents, and I will duly inform Her Majesty's Government of the interest which you take in this question.

I avail, &c., H. L. BULWER.

And finally, on the 5th July, Mr. Clayton signed the following memorandum:

The within declaration of Sir H. L. Bulwer was received by me on the 29th day of June, 1850. In reply I wrote to him my note of the 4th July, acknowledging that I understood British Honduras was not embraced in the treaty of the 19th April last, but at the same time carefully declining to affirm or deny the British title in their settlement or its alleged dependencies. After signing my note last night I delivered it to Sir Henry, and we immediately proceeded, without any further or other action, to exchange the ratifications of said treaty. The consent of the Senate to the declaration was not required, and the treaty was ratified as it stood when it was made.

(Signed) JOHN M. CLAYTON.

To this memorandum the following postscript was attached:

The rights of no Central American State have been compromised by the treaty or by any part of the negotiation.

It would seem, then, to be opposed to all sound principle that the United States should now claim to abrogate the treaty of 1850, by reason of the existence of a state of things which has prevailed, to their knowledge, before as well as since its ratification, to which the treaty

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was never intended to apply, and notwithstanding the known existence of which they have more than once recognized the treaty as subsisting.

It seems, indeed, to be suggested that at the time the Clayton-Bulwer treaty was made Honduras was only a British settlement under Spanish-American sovereignty, and that it has since been converted into a British possession, and that to this conversion the United States has never given its assent.

It is true that during the middle of the last century the British settlement at Belize owed its existence to the permission of Spain, and that the colonists were gradually allowed to occupy the territory now called British Honduras, for the purpose only of cutting logwood and exporting mahogany; but it is also a matter of history that when England and Spain were subsequently at war an attack made by the forces of the latter on the British settlement was successfully repulsed; and in consequence, from that time, British Honduras remained under the dominion of the British Crown.

When peace was signed most of the British conquests from Spain were restored to her; but the settlement in Honduras, like that of the Falkland Islands, was not given up, and continued on the same footing as any other possession under the British Crown.

At the time of the abandonment by Spain of all her possessions in South America she made no protest against the rights which the British Crown had acquired over Belize and British Honduras.

It is therefore clear that the sovereignty of British Honduras was acquired by conquest, and was possessed by this country long prior to the time of the Clayton-Bulwer treaty. I would observe, moreover, that the preamble of the postal convention concluded at Washington on the 11th August, 1869, and in London on the 4th September of the same year, shows that the United States have formally recognized British Honduras as being a "colony" of Great Britain.

The preamble of that convention, which received the formal approval of President Grant on the same day on which it was signed at Washington, runs as follows:

The general post-office of the United Kingdom of Great Britain and Ireland and the general post-office of the United States of America, being desirous of establishing and maintaining an exchange of mails between the United States on the one side and the colony of British Honduras on the other, by means of the British mail packet plying between New Orleans and Belize, the undersigned, duly authorized for that purpose, have agreed upon the following articles:

The contention, therefore, in Mr. Frelinghuysen's dispatch, that "a settlement" has been converted into a "possession," and a material change thereby effected, in consequence of the employment of the word "possession" in the treaty with Guatemala of 1859, can not be supported consistently with the facts above stated.

As regards the third question, Mr. Frelinghuysen states that—

The President is still ready, on the part of the United States, to agree that the reciprocal engagements respecting the acquisition of territory in Central America, and respecting the establishment of a free port at each end of whatever canal may be constructed, shall continue in force, and to define by agreement the distance from either end of the canal where captures may be made by a belligerent in time of war, and, with this definition thus made, to keep alive the second article of the Clayton-Bulwer treaty.

A similar proposal respecting captures by belligerents, as already shown, was made to Her Majesty's Government by Mr. Clayton shortly after the conclusion of the treaty of the 19th April, 1850; in fact, on

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the very day on which the ratifications were exchanged (4th July, 1850); and no objection was then offered by Her Majesty's Government to the conclusion of such an arrangement.

In a dispatch which was addressed to Sir H. Bulwer by Viscount Palmerston on the 4th October, 1850, his lordship stated:

With reference to your dispatch of the 8th July last, requesting to be informed of the views of Her Majesty's Government as to the arrangement which remains to be agreed upon between Great Britain and the United States with regard to the limits within which vessels traversing the ship canal between the Atlantic and Pacific oceans are to enjoy exemption from blockade, detention, or capture, I have to acquaint you that the lords commissioners of the Admiralty consider that a segment of a circle of 25 nautical miles radius, drawn to seaward from each end of the canal, as from a center, should be the limits within which vessels should enjoy the exemption in question.

And on the substance of this dispatch being communicated to Mr. Clayton at Boston, he informed Sir H. Bulwer that the proposal appeared to him to be a fair one, although he added that on his return to Washington, after receiving a written communication from Sir H. Bulwer on the subject, he would give him a more decided answer with respect to it.

On the 19th of May of the following year, however, Sir H. Bulwer reported that, although he had conversations with Mr. Webster respecting the different points which then remained unsettled in regard to the convention of the 19th April, his mind and time had been so occupied with a variety of other matters that he had frankly confessed to him that he had been unable, up to that time, to give that full attention to those subjects which would enable him to make what he should consider a satisfactory proposal concerning them.

Sir H. Bulwer then suggested to Lord Palmerston a plan for the settlement of some of these disputed questions, and added:

Should your lordship, under all the circumstances, be disposed to consider favorably this suggestion, the course which, after some consideration, I should be disposed to advise would be a new treaty supplementary to that of the 19th April, with Mr. Webster, settling, among other things, the distance from the two ends of the proposed canal at which, in case of war, neutrality should be observed.

No result was, however, arrived at.

The conclusions arrived at by Her Majesty's Government, after a careful consideration of the questions raised in Mr. Frelinghuysen's dispatch, are that the meaning and effect of Article VIII of the Clayton-Bulwer treaty are not open to any doubt; that the British Government have committed no act in relation to British Honduras or otherwise which can invalidate that treaty and justify the Government of the United States in denouncing it, and that no necessity exists for renewing any of the provisions of that treaty.

There might, perhaps, be advantages in defining by agreement the distance from each end of the canal within which no hostilities should be committed by belligerents, in order to maintain the freedom of the passage through the Panama Canal, should that route be completed; and when the time approaches for its completion Her Majesty's Government would, no doubt, be prepared to give its careful attention to the question of concluding an arrangement with that object, should such a proposal be made to them; but in the present stage of the enterprise they conceive that it would be premature to enter upon negotiations for that purpose.

I have not thought it necessary to allude in this dispatch to the "traditional continental policy" of the United States as laid down in

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what is commonly called the "Monroe doctrine," since Mr. Frelinghuysen, in his note of the 8th May last, in which he explained the views which were entertained by his Government on that subject, admitted that Her Majesty's Government was not called upon either to admit or deny the views therein expressed.

You will state to Mr. Frelinghuysen that Her Majesty's Government are animated by the most sincere desire to arrive at an amicable settlement of the questions which have given rise to this correspondence, and that they note with great satisfaction the friendly assurance with which he concludes his dispatch, that the diversity of opinion which now exists will not in any wise impair the good understanding happily existing between the people and Governments of the United States and Great Britain.

You will read this dispatch to Mr. Frelinghuysen, and, if he should desire it, place a copy of it in his hands.

I am, &c.,

GRANVILLE.

2.—Mr. Frelinghuysen to Mr. Lowell.

No. 586.] DEPARTMENT OF STATE,
Washington, May 5, 1883.

SIR: I inclose herewith copy of an instruction from Lord Granville to Her Britannic Majesty's minister in Washington, dated December 30, 1882, a copy of which was handed to me by Mr. West, and which is a reply to the agreement contained in my No. 368 to you, of May 8, 1882, on the subject of the Clayton-Bulwer treaty.

You will remember that my No. 368 showed that the first seven articles of the treaty related to a particular canal then in contemplation, to aid the construction of which the treaty was signed; that the United States being then without the means to build the canal, for which they had secured an exclusive grant from Nicaragua, naturally turned to England for capital, to secure which they were willing to surrender some of their exclusive privileges; and that the canal never having been built, the reason for the surrender of privilege has ceased and the treaty with Great Britain is voidable, being without consideration or any object to which it is applicable.

Lord Granville in his instructions to Mr. West in substance concedes that the first seven articles of the treaty related to what was then known as the Nicaragua Canal, but intimates an uncertainty as to the route. In this he is in error, for the line of the canal was definitely fixed soon after the conclusion of the treaty, and accepted by both Governments.

His lordship, however, practically confines himself to an assertion of rights under Article VIII, by which the parties—

after declaring that they not only desired in entering into the convention to accomplish a particular object, but also to establish a general principle, agreed to extend their protection by treaty stipulations to any other practicable communications, whether by canal or railway, across the isthmus which connects North and South America, and especially to the interoceanic communications, should the same prove to be practicable, whether by canal or railway, which are *now* proposed to be established by the way of Tehuantepec or Panama;

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and he claims that this provision is in effect an agreement that all the prior provisions with reference to the particular ship canal—the Nicaragua route—then in contemplation should be applied to any other canal thereafter constructed. Citing treaties between the United States and some of the Central American States, he contends that this Government, having since the Clayton-Bulwer treaty of 1850 entered into treaties which harmonize with the "general principle," is estopped from denying that the 8th article has the construction and effect he contends for.

Lord Granville further holds that Article VIII is none the less an agreement because it provides for further treaty stipulations to carry it into effect.

This argument has already been anticipated in my No. 368, in which it was shown that while the parties interested agreed, in Article VIII, to extend, by future treaty stipulations, their protection over other communications across the isthmus, the immediate object of the article was the protection of the communication "*now*" (1850) proposed to be established by the way of Tehuantepec or Panama. None of the proposed communications having been established, the reason for the agreement has disappeared.

Further, the article provides for carrying out the "general principle" by additional stipulations, which have not been even discussed. Nor is there anything in the eighth article which makes applicable to any other route the provisions of the first seven articles covering the "particular object," viz, the Nicaragua Canal.

The eighth article, therefore, is simply a declaration of the intention entertained more than thirty years ago, by two nations, to take up, at some subsequent period, the negotiations of a treaty on a particular subject. In order to carry out this purpose, treaties must be made by the United States and England with each other and with each of the Central American States through which a canal may be built, defining in detail the stipulations necessary to execute the general principle.

It cannot be successfully contended, as is suggested by Lord Granville, that the separate treaties made by this company with some of the Central American States, by which this Government agrees to guarantee neutrality, show an agreement to guarantee it jointly with Great Britain, for that would involve the admission that an express agreement to guarantee singly is in effect an implied agreement to guarantee jointly. Nevertheless, it is not denied that the United States did for many years try to induce Great Britain to fulfill her part of the agreement of 1850, and it was only when it became impossible for Her Majesty's Government to perform the promises which had led the United States to make the treaty that the position now maintained was assumed.

If it be contended that, even if the treaty may be considered as lapsed so far as it relates to the specific route by Nicaragua and the routes named in the eighth article as contemplated in 1850 (by Panama and Tehuantepec), yet the treaty is binding so far as it relates to other isthmian communication not specified and not then contemplated, the answer is that the treaty must be considered as a whole, and that the general stipulations of the eighth article would never have been made but for the stipulations as to the specified routes then contemplated, and that part of the treaty having lapsed, the general stipulation as to any interoceanic communication fails for want of consideration.

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To reach the construction his lordship seeks to put on the eighth article, its plain language must be disregarded, and the consideration must be ignored that the article is as applicable to the Panama Railroad as to any other means of isthmian transmit, and that by acquiescence for many years in the sole protectorate of the United States over this railway, Great Britain has, in effect, admitted the justice of the position now maintained by the President.

Passing the interpretation of Article VIII, you will remember that I contended that the Clayton-Bulwer treaty is voidable, because, while by Article I the two nations expressly stipulated that neither of them would occupy, colonize, or exercise any dominion over any part of Central America, Great Britain at this time has a colony, with executive and judicial officers, occupying a defined territory nearly equal in area to three of the smaller States in the Union.

It is true, as was shown in my No. 368, that after the treaty had been ratified by the Senate in the form in which it now appears, and on the 4th July, 1850, Mr. Clayton did exchange with Sir Henry Bulwer memoranda stating that the stipulation in Article I should not apply to the "*settlements*" in British Honduras (Belize), and it is also true that Mr. Clayton declined to affirm or deny the British title in this "settlement" or its alleged dependencies. Lord Granville now claims that Honduras was then already (and to the knowledge of this Government) a British "possession" or colony, by conquest from Spain through successful resistance by settlers to a Spanish attack.

The stipulations of the treaty, as well as the memoranda exchanged by Mr. Clayton and Sir Henry Bulwer, relative to a British settlement, appear to be inconsistent with any such claim, for nowhere in them can be found any statement which expresses or implies that Great Britain claimed, or the United States admitted, any such governmental control in the former over Belize as is now advanced, and as is necessarily implied in the word "possessions."

The date of the conquest of Belize, alluded to by Lord Granville, is not stated, but the incident to which he refers is supposed to be the repulse by a ship of the royal navy and the settlers of an attempt in 1798 on the part of Spain to take possession of Honduras. As the British settlers held under grants from Spain, it seems hardly necessary to consider whether the successful resistance of a tenant to an attempt to oust by force changes the tenure to one of full possession. His lordship, however, meets this point by a plea of possession through abandonment, saying:

> When peace was signed, most of the British conquests from Spain were restored to her; but the settlement in Honduras, like that of the Falkland Islands, was not given up, and continued on the same footing as any other possession under the British Crown.

By the third article of the treaty of Amiens, of 1802, Great Britain engaged to restore all Spanish possessions occupied or conquered by British forces. Belize was not given up because it was not a conquest, but a settlement under Spanish grants and Spanish sovereignty. The parallel with the Falkland Islands does not seem convincing, for these islands were ceded by France to Spain in 1763; by Spain they were in turn ceded absolutely to Great Britain in 1771, but their possession was abandoned until, in 1820, Buenos Ayres occupied the islands as derelict, and colonized them. Later, in 1831, after a difficulty between the settlers and American sealing vessels, the United States ship of war Lexington

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broke up the settlement and removed the settlers to Buenos Ayres, and it was not until 1833 that Great Britain enforced her claim under the cession of 1771.

As to Belize, however, there was no cession. If the sovereignty of Spain was annulled by conquest in 1798, it was restored by the treaty of Amiens in 1802; and while after this treaty and during the Bonaparte occupation hostilities were renewed, the treaty of 1809 provided that there should be peace between Spain and Great Britain, and "also an entire obliteration of all hostilities committed during the late war." Since the conclusion of this treaty Spain and Great Britain have been at peace, and it is not imagined that Earl Granville will seek to show that a lawful possession could be thereafter created for Great Britain by a violation of that treaty in time of peace. No conquest of any part of Honduras is known to have occurred after 1802, but if there were, the perpetuation of this conquest would hardly comport with the reciprocal engagement of 1809 to restore the *status quo ante bellum.*

On the other hand, it is known that the settlements in the Belize were made under certain limited grants from Spain, subject to her sovereignty, and that long after the treaty of 1809 the occupation was generally regarded simply as a "settlement," and was so called by Lord Clarendon as late as 1854, in a note to Mr. Buchanan, and so remained until May 12, 1862, when by royal commission it was erected into a full colony and subordinated to the Government of Jamaica.

If Great Britain has turned the "settlement" maintained for the cutting of logwood and mahogany into an organized British colony, and this is admitted, or if that settlement has encroached beyond the line occupied by the settlers in 1850, and the reports from Guatemala and Mexico tend to show that this has been done, the action has been taken in contravention of the Clayton-Bulwer treaty and in violation of one of its most important provisions. The insufficiency of this part of Lord Granville's argument is shown by the contention that through a postal convention this Government has recognized the British position. The negotiation of a postal convention in 1869 cannot be held to involve any admission of the political status of the Belize district. It is a strained construction of such an agreement to hold that it works an estoppel as to a matter not in the mind to either party to the negotiation and as to which both parties were endeavoring to reach a satisfactory conclusion through other and different channels; nor does the Post-Office Department act politically in its dealings with similar departments of other Governments.

If, however, the United States had submitted to the conversion of the Belize to a colony by Her Majesty's Government, in violation of the treaty, that is by no means a recognition of the binding force of the treaty on the United States when thus violated.

In the conviction, therefore, that the arguments heretofore presented by the United States remain unshaken, the President adheres to the views set forth in the instruction to you of May 8, 1882.

Lord Granville concludes by saying in effect that he does not answer that part of the instruction to you which relates to the Monroe doctrine, because of my observation that it is not necessary for Her Majesty's Government to admit or to deny that doctrine. As his lordship placed the claim of Her Majesty's Government on the continued binding force of the Clayton-Bulwer treaty, limiting that doctrine as we contend, I think my remark was logical, and so far as the United States are concerned, their views on that doctrine are sufficiently manifest.

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You will assure Lord Granville that this Government shares the sincere desire of that of Her Majesty to arrive at that amicable adjustment of the question which cannot fail to promote harmony and good will between the two countries, and which it is my duty and pleasure equally with his lordship to do all in my power to perpetuate and increase.

You will take an early occasion to read this instruction to Lord Granville, and, if he should so desire, to leave a copy with him.

I am, &c.,

FRED'K T. FRELINGHUYSEN.

3.—*Lord Granville to Mr. West.*

FOREIGN OFFICE,
August 17, 1883.

SIR: On the 29th May last, Mr. Lowell communicated to me a copy of a further dispatch, dated the 5th of that month, which he had received from Mr. Frelinghuysen, respecting the projected Panama Canal, of which a copy was forwarded to you in my dispatch No. 128, of the 16th June last.

By my dispatches of the 7th and 14th January, and 30th December, 1882, which were written in answer to several letters addressed by the United States Secretaries of State to the American ministers at this court, and with the contents of which I had been made officially acquainted, you were informed of the views which Her Majesty's Government entertained on that important subject.

Mr. Frelinghuysen, however, in his letter to Mr. Lowell of the 5th May last, after commenting upon the contents of my last dispatch to you of the 30th December last, says that the President still considers that the arguments which have been presented to Her Majesty's Government by the United States upon this subject remain unshaken, and that he adheres to the views set forth in the instructions which were given to Mr. Lowell on the 8th May, 1882, a copy of which was communicated to me on the 31st of that month.

This further dispatch from Mr. Frelinghuysen to Mr. Lowell has been carefully considered by Her Majesty's Government.

They have not failed to remark that Mr. Frelinghuysen still contends that the Clayton-Bulwer treaty is voidable on two grounds: first, because the first seven articles of that treaty related to a *particular* canal by the Nicaraguan route only; and, secondly, because Great Britain has at the present day a colony, instead of a settlement, at Belize; but, with regard to the first of these contentions, I explained to you in my dispatch of the 30th December last why Her Majesty's Government were unable to accept that view, bearing in mind the eighth article of the convention. I pointed out to you that it was expressly recorded in that article that the high contracting parties, in entering into that convention, had *not only* the desire to accomplish a *particular* object, but also to establish a *general principle*, and that, with that view, they agreed to extend their protection by treaty stipulations to "any other" practicable communications, whether by canal or railway, "across the isthmus" which connected North and South

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America, and "especially" to the interoceanic communications, should the same prove to be practicable, whether by canal or railway, which it was then proposed should be established by the way of Tehuantepec or Panama.

No time was fixed by the convention within which such interoceanic communications were to be made; and her Majesty's Government consider that it would be putting a false construction on the convention to say that the stipulations contained in the eighth article had sole reference to the canal schemes which were actually under consideration at the time of the conclusion of that convention, for had such been the intention of the contracting parties, they clearly would not have made use of the expressions "especially" or "any other," when speaking of the canals which it was then contemplated might be made across the isthmus.

With regard to Mr. Frelinghuysen's further contention, that the Clayton-Bulwer treaty has been abrogated by the fact that British Honduras is now a "colony," instead of remaining a "settlement," as it was called at the time of the conclusion of that treaty, I need only remark, in addition to what has already been stated to you in my previous dispatches, that when that treaty was concluded, in 1850, it was signed on the distinct understanding, expressed in writing, that it was not to apply to "Her majesty's settlement at Honduras," and that it was therefore not deemed necessary, at that time, either to mark out the exact limits of that settlement or to define its "dependencies."

Inasmuch, then, as British Honduras was expressly excluded altogether from the arrangement which was entered into between the two Governments in 1850 for the settlement of the questions then in dispute, and all of which questions President Buchanan informed the United States Congress in December, 1860, had been amicably and honorably adjusted, Her Majesty's Government can not see with what justice it can now be said that the change of title of that possession of Her Majesty, from that of a "settlement" to a "colony," can be appealed to as a violation of the arrangement of 1850.

You were informed in my dispatch of the 30th December last that I did not think it necessary to burden the correspondence on the Panama Canal question with a discussion on the so-called "Monroe doctrine," because Mr. Frelinghuysen had admitted, in his dispatch of the 8th May, 1882, that Her Majesty's Government were not called upon either to admit or deny the views which he explained in that dispatch as being those which were entertained by his Government on that subject, but as Mr. Frelinghuysen, in his dispatch of the 5th May last, still maintains that the views of the United States on that doctrine are sufficiently manifest, I may remind you that the views which were entertained by President Monroe have not always been accepted by his successors; nor have the same views been always entertained either by the American Congress or by the Secretaries of State of the United States, but the mere fact that a treaty was concluded between this country and the United States in 1850 (twenty-seven years after the so-called "Monroe doctrine" was enunciated), for the express purpose of establishing communication by ship canal across the isthmus of Central America, and of *jointly* protecting any such communication which might be made, is a clear proof that neither the American administration of that day nor the United States Congress which sanctioned that treaty considered that they were precluded by the

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utterances of President Monroe in 1823 from entering into such a treaty with one or more of the European powers. How, then, can it be said, at the present day, that the Clayton-Bulwer treaty is opposed to the "Monroe doctrine?"

Mr. Buchanan admitted, in January, 1854, that—

> The main feature of the policy which dictated the Clayton-Bulwer convention was to prevent either Great Britain or the United States from being placed in a position to exercise *exclusive control*, in peace or war, over *any* of the grand thoroughfares between the two oceans;

and that being the policy which Her Majesty's Government are still anxious to adhere to, it has been with much regret that they have seen a disposition on the part of the present Government of the United States to depart from that policy by objecting to any concerted action of the European powers for the purpose of guaranteeing the neutrality of the projected Panama Canal or determining the conditions of its use.

The President of the United States stated in a message to Congress in March, 1880, that the present policy of the United States with respect to an interoceanic canal is the construction of "a canal under American control;" but it was pointed out to you, in my dispatch of the 7th January, 1882, that, while recognizing to the fullest degree the extent to which the United States must feel interested with regard to any canal which may be constructed across the Isthmus of Panama, Her Majesty's Government would be wanting in regard to their duty if they failed to point out that Great Britain had large colonial possessions no less than great commercial interests, which rendered any means of unobstructed and rapid access from the Atlantic to the North and South Pacific oceans a matter for her also of the greatest importance.

Her Majesty's Government see no reason whatever to depart from, or in any way to alter, the views which have been conveyed to you in my dispatches above referred to, and they have therefore arrived at the conclusion that a prolongation of the discussion seems unlikely to lead to any practical result.

I have made the above observations on Mr. Frelinghuysen's note for your information and guidance; but you are at liberty to read this dispatch to Mr. Frelinghuysen, and to give him a copy of it should he desire it.

I am, &c., GRANVILLE.

No. 4.

Mr. Frelinghuysen to Mr. Lowell.

No. 708.] DEPARTMENT OF STATE,
Washington, November 22, 1883.

SIR: I inclose herewith a copy of an instruction from Lord Granville to Her Britannic Majesty's minister in Washington, dated August 17, 1883, a copy of which was handed me by Mr. West, and which is in reply to my 586 to you of May 5, 1883, on the subject of the Clayton-Bulwer treaty.

You will observe that Lord Granville says:

> That Mr. Frelinghuysen still contends that the Clayton-Bulwer treaty is voidable on two grounds—first, because the first seven articles of the treaty related to a *particular* canal by the Nicaraguan route only; and, secondly, because Great Britain has at the present day a colony instead of a settlement at Belize.

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Lord Granville's attention should be called to the fact that this Government not only holds the position to which he has referred, but also holds, as stated to you in my instructions of May 8, 1882, and May 5, 1883, that for the purpose of obtaining the then needed capital to construct an interoceanic canal by the Nicaraguan route the United States were willing to surrender a part of their exclusive privileges in a canal by that route, and were also willing to agree that, by subsequent treaty stipulation, they would join with Great Britain in the protection of the then proposed Tehuantepec, Panama, or other interoceanic communication, and that the consideration having failed the treaty is voidable as to the Nicaraguan route and as to the other routes.

Lord Granville raises the point that "no time was fixed by the convention within which such interoceanic communications were to be made." While this statement is correct, it is also true that it was contemplated that the canal was about to be constructed at the time the treaty was negotiated, and that the survey therefor was then made, and that thirty-three years have elapsed without Great Britain rendering the consideration on which the treaty was based, and this failure, we think, affects the treaty in the same manner that a failure by Great Britain to give the consideration within a definite time, had one been fixed by the convention, would have affected it.

The treaty provides that neither the United States nor Great Britain shall colonize or exercise any dominion over any part of Central America. This was a most important provision. It is one of a cluster restraining one nation from having any advantage over the other in regard to the police of the canal, such as the provision against alliance, against occupation and fortification, and against taking advantage of any intimacy or influence, and yet it is claimed that the treaty does not prohibit the existence of a large regularly organized British colony in Central America, while, it does prohibit the United States from having any possessions or colony there. The color for this claim is that while the stipulation that neither of the two Governments should colonize any part of Central America is most conspicuous, the declaration of Sir Henry Bulwer, prior to the exchange of ratifications of the treaty, states, "That Her Majesty does not understand the engagements of that convention to apply to Her Majesty's settlement at Honduras or its dependencies." This declaration can not be held to authorize the subsequent colonization by Her Majesty's Government of a territory as large as three of our smaller States. The declaration was made not to change or vary the treaty, but out of abundant caution that it might not be misunderstood. The meaning of the declaration, we think, is that a mere settlement of British subjects for the purpose of cutting mahogany and logwood in Honduras under Spanish-American sovereignty was not to be considered a British colony and thus be a violation of the treaty, and I fail to see how, since the exchange of the ratifications of the treaty, the organization of a colony, with full colonial government under the British sovereignty, can be looked upon as authorized or allowed, either by the treaty or by Sir Henry Bulwer's declaration.

The two contracting parties were equally bound not to colonize any part of Central America, and the declaration itself of Sir Henry Bulwer, not being the exception of any territory in Central America from the operation of the treaty, but providing in effect that the settlement

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should not be considered a British colony, tended to strengthen and not to destroy the mutual obligation not to colonize in Central America.

Lord Granville is correct in saying that I stated in my instruction to you of May 8, 1882, that Her Majesty's Government was not called upon either to admit or deny the views therein expressed as to the Monroe doctrine, and this was so for the reason there given, to wit, because Her Majesty's Government placed its claim to join in the protection of the interoceanic canal on a treaty which, if binding, certainly modified the Monroe doctrine, but the fact that this Government for a promised consideration modified by treaty what is called the Monroe doctrine, I think, does not in any manner affect that doctrine after the treaty has fallen, because of its infraction and because of the failure of the consideration contemplated.

You may read this instruction to Lord Granville, and leave a copy of it with him should he desire it.

I am, sir, &c.,

FRED'K T. FRELINGHUYSEN.

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[Senate Mis. Doc. No. 12, Forty-eighth Congress, second session.]

DECEMBER 10, 1884.—Ordered to be printed.

DEPARTMENT OF STATE,
Washington, March 29, 1884.

SIR: I have the honor to acknowledge the receipt of your letter of the 27th instant, and, in compliance therewith, to transmit herewith copies mentioned below of the dispatches of Mr. George Maney, formerly our minister at Bogota, relative to the Panama Canal, and to observe that the entire correspondence upon this subject, called for by the resolution of the Senate of February 12, last, will be forwarded at the earliest practicable moment.

I have the honor to be, sir, your obedient servant,

FRED'K T. FRELINGHUYSEN.

Hon. JOHN F. MILLER,
Chairman Committee on Foreign Relations,
United States Senate.

INCLOSURES.

1. Mr. Maney to Mr. Blaine. No. 1, September 28, 1881, with inclosures.
2. Mr. Maney to Mr. Blaine. No. 3, October 18, 1881.
3. Mr. Maney to Secretary of State. No. 8, January 17, 1882, with inclosures.
4. Mr. Maney to Mr. Frelinghuysen. No. 16, May 28, 1882.
5. Mr. Maney to Mr. Frelinghuysen. No. 19, July 12, 1882, with inclosure.

No. 1.

Mr. Maney to Mr. Blaine.

LEGATION OF THE UNITED STATES,
Bogota, September 28, 1881.

SIR: * * * Without special instructions, I have assumed from personal expressions on your part that in respect to either a *ship canal* or *other line of interoceanic* communication through or over any part of this country, especially the Isthmus of Panama, that it was the main and settled policy of our Government to prevent *political control* thereof by any *foreign power*, and in a general way aimed to serve this policy upon my reception by the President. I have since met many of prominence in the country, and if I accepted as literally meant all their encouraging expressions, would feel there was no difficulty to the success of any policy you may desire to establish here.

* * * * * * *

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In personal conference with the secretary of foreign relations and others of political influence, I have, to extent of opportunities, endeavored to impress that our Government, because of its present vast domain and late internal war upon sectional lines and issues, desires no enlargement of territory or additional responsibility of control, but rather to renationalize, reunite, and harmonize the vast population it already has; and even if, in the possibly supposed case, Colombia should seek to surrender its nationality by incorporation with us, it would be answered no, and urged to maintenance of its separate Government, with assurance of all sisterly solicitude and readiness on our part to aid in forcibly resisting usurpation of its independence by any foreign power.

From this premise I have proceeded to ask if any European Government would refuse such proffered control; even if there were not some that, but for fear of consequences, would seize any opportunity to forcibly attain it.

By this line of presentation I have sought to establish *peculiarity* to our Government, and impress that, in the very nature of things, it must be Columbia's most trusted friend.

This is extent of my diplomatic action thus far; and as correct beginning is important. to fortunate conclusion, I trust you will yourself consider these features of my first dispatch, to the end of correcting any error or suggesting improvement where I may have been deficient.

* * * * * * *

I am, sir, &c.,

GEO. MANEY.

[Inclosure 1 in No. 1.]

Mr. PRESIDENT: In being presented to Your Excellency for official recognition as minister resident near your Government for the United States of America, I should be false to a prime duty were I to neglect effort to express the thorough and profound friendliness of my country and its authorities to the Government and people whose safety, honor, and welfare are so prominently intrusted to Your Excellency as Chief Magistrate.

If with any there has ever been suspicion or mistrust of this friendship, relying that, under rule of the All Perfect, truth must at the end prevail against error, I confide that, with exercise of the calm and conscientious consideration always due in public affairs, such doubt or prejudice will vanish, and be substituted only with reciprocal confidence and good will.

Sir, in the formation of the two nations history but repeated itself. If we of the United States exult in the memory of our Washington and his compatriots, we must recognize their counterparts in your wise and magnanimous Bolivar, your zealous and sagacious Santander, heroic Cardova, whose glorious youth shone resplendent in the clouds of war, and many others who gave up fortune and life for their country's nationality and independence.

As sister republics with such like history and traditions of "Freedom's battle fought and won," it is a *faith* with the one I have the honor to represent and its people, that while with the broad liberality proper to freemen we should favor and promote every great enterprise or improvement, commercial or other, tending to serve the welfare of mankind; dealing with all such as private or personal interests in perfect honesty, and generously, too, in the degree of their importance; yet, in *all* matters of political or governmental control, that both nations will heartily concur in the sentiment "America for Americans," and in disposition to sacredly guarantee and maintain the territorial sovereignty of each in accordance with national boundary lines as at present existing.

It remains for me, with sentiments of profound personal respect and esteem, to deliver into Your Excellency's hands this letter of credence from the honored President of my country.

GEO. MANEY.

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[Inclosure 2 in No. 1.]

Mr. MINISTER: Very satisfactory for me has been the receipt of the autographic letter that you have just placed in my hands, because the personal qualities which favor you give me full confidence that your presence among us will be a cause of security to the bonds that traditionally unite the two people, confirming the trust that we possess in the high spirit of justice that ever prevails in the illustrious Government of the United States of the North.

The two nations constituted on the same principles, united in the decided proposition to maintain in every part of the territory they occupy the integrity of those principles against foreign attempts, which to-day are fortunately improbable; jointly respecting the memory of their glorious liberators, among whom, however, Washington and Bolivar, as if all had been born on the same soil; nothing more easy than to maintain the good understanding existing and now additionally fortified. Within the limits of duty I assure you I will omit no effort to realize so desirable an end; likewise, I give you my sincere wishes that your residence on Colombian soil may be pleasant.

No. 2.

Mr. Maney to Mr. Blaine.

No. 3.] LEGATION OF THE UNITED STATES,
Bogota, October 18, 1881.

SIR: * * * Reverting to the question of the contemplated ship-canal, I have found much occupation in removing causeless apprehensions and prejudices toward our Government in this matter, and in addition to views submitted to the authorities here, as set forth in my dispatch (No. 1), have suggested that the United States Government, above all things, desired assured continuance of its present great material prosperity through uninterrupted peace, and upon the principle of an ounce of prevention being better than a pound of cure, was convinced that unity of the two Governments by treaty, relieving of the weakness of isolation, would, in the degree of increased formidability, deter all assault upon either, and so serve the best interests of both; that the United States envied Colombia no part of the tolls or revenues to be derived from the canal, but only sought such conditions as would securely prevent its use, in case of war, for sudden concentration of large naval forces to ravage its extended sea-coasts, and in return for this was willing to pledge its powers to maintenance of Colombian sovereignty over the limits of Panama, and conditionally to cooperate in defense of its entire territory; that as the nature of things had compelled an European policy for Europe, so the time was at hand when America would find necessity for an American policy, and surely Colombia could not look elsewhere for advantages equal to those assured by such alliance with the United States.

* * * * * * *

While conviction of their own interest can alone be relied on to secure willing adoption of any proposition by this people, I am encouraged to think my efforts have not been wholly barren of such conviction.

I am, sir, &c.,

GEO. MANEY,
Minister Resident.

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No. 3.

Mr. Maney to the Secretary of State.

No. 8.] LEGATION OF THE UNITED STATES,
Bogota, January 17, 1882.

SIR: * * * The views set forth in inclosure [1] have also been freely used in interviews with prominent citizens here, as I trust with only favorable results, and some days since it was suggested by the second officer of exterior relations department, that I should furnish them in writing to the department, as President Nunez was then preparing his message to Congress, and might desire to examine them. This, without making known my reason, however, I declined, preferring first to be advised by you in the particular.

* * * * * * *

I give it as my best judgment, then, to supply the department here with the writing, as suggested, can do no harm, and possibly may result in some advantage.

My reasoning on the matter is, the necessity is upon us to overcome what has been a violent and perhaps yet is a popular opposition, and for this some positive action is required. If the views have any merit, and the authorities here are friendly to them, they will know how to make the best use of them. If unfriendly, having clear knowledge of them from my very frequent and distinct expressions, verbally, they can more easily impair their force by distortion than if they were in writing. Again, if there is opposition by the authorities the result is defeat, unless support is elsewhere obtained, and their publication might possibly afford this. In this light we would but exchange certainty of defeat for chance of success.

I am, &c., GEO. MANEY,
Minister Resident.

[Inclosure 1.]

LEGATION OF THE UNITED STATES,
Bogota, ——— —, 1882.

To the honorable the Minister of Exterior Relations, &c., &c., &c., Bogota:

SIR: I presume to submit to your honorable department certain views touching the truly important international question of the Panama Canal, which have been verbally discussed with several prominent officials of your Government and many of its private citizens, and if there has not been in all instances entire harmony in conclusions it is a pleasure that there was perfectly friendly and respectful feeling between those who differ.

Making this exposition brief as gravity of the matter permits, I will first say, construction of the canal, under proper guarantees against its possible use ever by non-American powers, for other than the purposes of peaceful commerce, would perhaps be more to the immediate benefit of my country than any of the world, since to compete for the vast trade of China and other populous countries of the remote East, its chief centers of production are now at the disadvantage in water carriage of the Atlantic's breadth, farther from the contested markets than European competitors, while the opening of your canal would bring them within about equal distance.

This fact should at once convince of its sincere desire for the construction. But great as would be the advantage, it can be more than counterbalanced by political control of the canal by European powers maintaining immense standing armies and naval forces, and it is to this condition, fecund of future complications dangerous to the entire family of American Governments, that mine is irrevocably opposed, and remembering opportunities favor results, is profoundly anxious that this grave danger shall not be invited by improvident engagement of such powers, in unnecessary

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guarantees in the premises. If told it can join in the European guarantee and so equalize in influence over the enterprise, its answer is, to secure this will require maintenance of a like large standing army, in violation, if not subversion, of both its institutions and genius.

With the United States it is a conviction that peace is the true policy of all American Governments. Different from the more densely populated countries of the old world, upon every part of this continent are forests to be felled and new fields reduced to cultivation, mountains to be ripped for their precious contents, mines to be opened, furnaces and factories to be built, and in these "victories of peace" happy and profitable employment for many times its present population, without banding them into huge standing armies to threaten the safety of any, or consume, waste, and destroy, in place of adding to, the substance, prosperity, and happiness of the countries. Further, by making this matter strictly an American affair, taking, if deemed expedient, American guarantees in the premises, will you not as fully secure to yourselves all benefits of the canal, and without risk of its ultimate appropriation by those with power to forcibly do so, as under the teachings of history has so often occurred in like cases?

If this be opposed with assertion that the joint guarantee of the European nations is a necessity to command the large means requisite for construction, it may be answered that it is in your power at will to take the guarantee assuring use of the canal for purposes of peaceful commerce to all nations alike, and then violation of faith by those guaranteeing would not only work forfeiture of all their benefits as guarantors, but clearly be *casus belli* to all nations at interest as beneficiaries in a trust, and under this condition how can facilities for commanding means of construction be lessened?

Nor can this course be in the least cause of umbrage to any European power, since to extent that political relations between the different nations of that continent are at all regulated by others, exclusive jurisdiction is claimed and exercised by European nations, and should any government, not European, propose participation in this, such as arranging what is known as "the balance of power," or guaranteeing a European nationality, it would be met and treated as an unprivileged intruder. First, on the ground that its action warranted reasonable suspicion of ulterior, perhaps sinister, designs, and, further, that, as neighboring inhabitants, theirs were the best opportunities for knowing and the greatest interest to do what was proper in the premises. Nor is it to be doubted that this exclusiveness of control in such matters would be promptly vindicated by force if necessary.

May it not, then, be respectfully submitted that, as time and conditions have developed the necessity of a policy by Europe for Europe, so there has now come necessity of a policy by America for America?

Legally viewed under the precedent in full thus established for self-regulation by Europe, claiming to be foremost in civilization, it follows that in law and morals, nations to nations are under like obligations as men to men, and to this all reason assents; for should each attempt the same absoluteness in matters, though primarily and mainly connected with itself, yet seriously affecting the well being of others, as may be justly exercised in those affecting itself solely, in the nature of things peace would bid the world farewell until, by war and conquest, all had been subjugated into one.

Is it not, then, a sequence to both reason and precedent that, as a constituent part of this continent, Colombia may not of right ignore her obligations of relation to other American Governments to their injury and danger?

If these views are contested with the claim that it is a boast of America that, in this land of different institutions, European precedents are without binding force, and hence Colombia has absolute and unconditional right to do her pleasure in this matter without consideration of effects for good or evil upon other countries, it may be replied, it is a universally accepted principle of law that "none may use his property to the abuse of another's;" and if, in this case, the natural obstacles to sudden concentration of large naval forces to ravage, in case of war, the exposed coasts of the United States and other American Governments are removed by construction of the canal without thorough guarantee that it shall never be so used, this clearly would be a use of Colombian property to the dangerous abuse of that of the United States and other American Governments.

Further, let us remember the right of self-defense is fundamental, inhibited by no law, and under its principle an individual may excusably destroy not one, or a hundred, lives, but indefinitely and without limit other than his capacity, should danger to his own require it. Nor is this destructive action limited always to the immediate imposition of such danger, but under some conditions may be justly exercised in anticipation and prevention of it. Law, being but the highest effort of human reason for perfection in the relations of mankind, if, under its doctrines, these are the rights

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of persons, *a fortiori* they are the rights of nations in degree of their superior importance to persons.

Certain I am that my Government proposes in all relations with others to limit its actions to what is sanctioned by precedent and established principles of law; and it being both my instruction and disposition to claim for it no virtue not equally conceded to yours, Colombia's unwillingness to act in disregard of these must be concluded.

But, passing further consideration of rights and obligations in law and morals, and viewing the matter simply in the light of Colombia's interest, where can be the wisdom of seeking joint guarantees of the European powers? If she possessed within herself power adequate to assure all desired conditions respecting the canal, she would neither ask nor permit any other nation to make the guarantees in question, and this for the sufficient reason of dangerous complications necessarily possible if not incident to such foreign guarantees.

Surely no Colombian will dispute this proposition. With then the single guarantee of the United States there is but one risk of such complication, whilst with five guarantees there will be five such risks, and so on in proportion to the number guaranteeing. Is not diminution of such dangers sound wisdom in the serious matter of government?

Nor may we forget in this connection the fate of seizure and permanent retention by European powers of all great strategic positions of the world, Gibraltar at the straits, Cypress at head, and other points at the foot of the Suez Canal, together with presently impending threat to Egypt through the jealous strife of England and France for supremacy over that eastern connection of oceans. Further, was the integrity of Turkey preserved, or its dismemberment realized under a joint guarantee of European powers, and does experience afford better means to judge the future than by the past?

If assurance is demanded against possible seizure by the United States Government, the answer may be: First, it holds as a fundamental principle that "all government rests upon consent of the governed;" hence with it usurpation would be self-violence. Second, for thirty-five years its single guarantee, faithfully kept, has amply secured to Colombia all her rights of sovereignty and property over the entire isthmus.

And if its well-attested high sense of right and justice need be supported with reasons of expediency, it may be added that, owing to its late trying civil war, growing out of sectional lines and interests, it is without disposition to promote danger of recurrence of such misfortune by enlarging margin for antagonisms, either in extending its immense territorial possessions or adding to its responsibilities in government. So, in case—supposed, merely for the argument and freely acknowledged impossible—should Colombia even seek to transfer to the United States the responsibility of absolute dominion over the canal and adjacent territory necessary to the object, as it would be new in practice, and foreign to the spirit and character of that Government to maintain permanent military garrisons beyond its limits, it would most probaby answer that this could be to the advantage of neither, and urge Colombia to maintain her sovereignty intact, with the assurance of readiness to aid in resisting any attempt at usurpation of this by others. In a word, under present persuasion that the two are by force of conditions bound to friendship, the United States Government may reasonably prefer Colombia's ownership of the canal to its own, but be this as it may, it is clearly proven by long and scrupulous fidelity to treaty obligations in the matter that my Government could only be prompted to attempt even temporary appropriation of any part of Colombia's domain by conviction of necessity, to prevent its forcible rape by some less friendly power, to the dangerous exposure of its own security and that of all other American Governments. So, danger to Colombia's integrity through designs of the United States is simply impossible; and in this is there not just claim to peculiarity, since any of the European powers would gladly accept Colombia in whole or part as an appendage even if some, but for fear of results, would not repeat history by inventing excuse for forcible seizure?

These views have impressed. That because of its importance in the future of American affairs, and especially of its benefits to our two republics, sooner or later a treaty of friendship, thoroughly identifying them in interest, is destiny, and even should public men in both labor against this, they can only delay, not defeat, fate, for when we are dust, if not before, it will be accomplished. But may it not be reasonably hoped of the intelligence and patriotism of those now officially intrusted with the welfare of each that they will, by speeding the end, more immediately secure to both the immense advantages to follow, and win to themselves continued confidence as benefactors to their countries.

In conclusion, with assurances of profound respect and friendliness on part of my Government to the Government and people of Colombia,

I am, sir, &c., GEO. MANEY.

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No. 4.

Mr. Maney to Mr. Frelinghuysen.

No. 16.] LEGATION OF THE UNITED STATES,
Bogota, May 28, 1882.

SIR: Upon appointment to this post my entire instructions, written and verbal, were "to cultivate friendly relations, and prevent European guarantees of the contemplated Panama Canal."

If manifestations can be accepted as evidence, my success in bringing about feelings of both confidence and friendliness on part of this Government and people toward ours has surely been reasonable, and I think, for the time at least, the guarantees mentioned are secured against.

In early part of its present session a resolution aiming at abrogation of our treaty of 1846 with this Government, relative to the Isthmus of Panama, was presented in the Congress, but I had it met with the proposition that "if the United States Government were truly a friend to Colombia, abrogation of the treaty was not to be wished, and if, on the contrary, it selfishly contemplated forcible seizure of any part of Colombia's possessions in the Isthmus, it certainly was not provident to remove existing obligations against such action, imposed by the treaty."

The resolution was decisively defeated, and I have no apprehension of its renewal before this Congress.

I am, sir, &c., GEO. MANEY.

No. 5.

Mr. Maney to Mr. Frelinghuysen.

No. 19.] LEGATION OF THE UNITED STATES,
Bogota, July 12, 1882.

SIR: * * * Being wholly uninformed as to Mr. Scrugg's instructions, I transmit herewith, as inclosure No. 1, a statement of views submitted to the authorities of this Government in reference to the Panama Canal, which, with inclosures heretofore made in dispatch No. 8, completes my argument in the matter. If I have unfortunately conflicted in this with the Department's policy, a full knowledge in the premises may contribute some facility for the desired correction.

Am happy in being able to assure you of a very favorable feeling here toward our Government, and shall conscientiously endeavor to impart to my successor every aid in my power to promote and increase this.

I am, sir, &c., GEO. MANEY.

[Inclosure in No. 19.]

In supplement or elaboration of points heretofore suggested in reference to the Panama Canal, the following is respectfully submitted:

Without discussing the propriety in taste or policy of a nation's indicating its incapacity of self-protection by seeking or accepting indiscriminately from others guarantees of sovereignty, or property in what is its undisputed own, it should not be

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forgotten, as both experience and history, that complications incident, if not inherent, to such guarantees may promote danger rather than security to the end proposed. Certainly in the premises here considered chances of such complications, together with opportunities of seizure, are multiplied in proportion to the numbers so guaranteeing, and objections in this respect are surely not weakened by the fact that the canal cannot in possibility be completed within ten years. Would it not be wiser, then, to await its completion before entering into engagements so serious in connection with it? He is a rash man who will declare even the near future, and scarce a rational one who will answer for that of a decade. Precipitate or premature action in this grave matter may easily be followed by only regrets through all time to come, and certainly in the present there is no pressing reason for incurring such risks or disturbing the *status quo*.

But to further consideration of the relations of nations to this truly international enterprise—to the question, has the United States any right or claim upon Colombia's property in the canal different or superior to that of other foreign nations, the answer is, as to its uses solely for peaceful commerce, none; but with respect to its uses for war purposes, yes, as against all others than those of America. And this because, as a means of sudden concentration of large naval forces, it can contribute to the injury or destruction of American Governments, but not possibly to that of any European. The security of the two being thus unequal in the matter, their relations to it are of right correspondingly different; for surely the instinct to self-preservation and self-security, common to all nature, beyond being excusable, is commendable in governments, by reason of their paramount importance. Nor can it be overlooked that this is an affair from which the United States Government, because of geographical and other natural relations, could not, if it would, disengage itself.

To the proposition that the United States Government enter into a joint guarantee of the canal, it may be replied that, apart from its cherished tradition, "Friendship to all nations, entangling alliances with none," it would illy accord with its accustomed prudence that, conscious of its own upright and peaceful intentions, yet ignorant of those of others, it should so involve itself in responsibility for the action of European powers, which, even if of good purposes to-day, are likely throughout the future to maintain all present vast preparations for wars and conquests. If insisted that, under the joint guarantee, danger of seizure will be secured against by all being a check upon appropriation by either, and that such course is necessary to command the large means requisite for construction, it may be answered the guarantee in any case would be upon the terms prescribed by the sovereign Colombian Government, and these being "free and equal use of the canal for peaceful commerce to all nations alike," if the guarantee be not thereby fully effected to Colombia's best advantage, through the interest of all to prevent seizure by any, in so making it exclusively the United States Government would plainly become, as it were, a trustee, and compelled to fidelity in its trusts, since violation of them would not only work forfeiture of all rights and benefits as guarantor, but clearly be *casus belli* to all nations at interest. With such conditions how can facilities for commanding means of construction be diminished; and, in addition, have you not all nations held to your protection by the bond of self-interest without the temptation of opportunity for your spoliation?

Naturally American policies will form a basis for popular politics in America; but let us see if the maxim, "America for Americans," is not above all mere *ad captandum* and so founded in reason as to afford, equally with any other immutable law, benefits or penalties, according to its observance or neglect, alike to all.

The United States Government in the desire of more intimate and friendly relations with its sister republics of the south, may be willing to adopt your canal for all future purposes, and so secure to it exclusivenes as a western interoceanic communication, upon condition, however, of its impossible use to its injury in event of the misfortune of war with any great maritime power; but without this security it will naturally look to construction of another which it can control for its defense and protection; and with its immense wealth and progress, who will doubt its capacity to obtain this? With the experience, too, acquired in construction of yours, another can be built through several parts of the narrow land connecting the two Americas, at an equal if not less cost, and any from the Nicaragua route to Tehuantepec, having decisive advantage over yours in water distance between all great trade points. Suppose, then, your enterprise should be duplicated through either of these localities. The United States would secure an inner line, and one much shorter, upon which to maneuver a navy in case of war. But war in this age of enlightenment is not the normal condition of nations; and in peace this, upon all promptings of interest, would be freely and equally opened to commerce, with advantage over yours of difference in distance between all the chief commercial centers of the world of more than a thousand miles in each round voyage.

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Need the suggestion be pressed or elaborated?

With a rival possessing such overwhelming advantage, your canal, instead of bearing through Colombian territory the vast commerce of Europe and Atlantic America to and from the dense populations of Asia, may fall from the magnificence of a monopoly into absolute neglect; and if its construction be a question of money, though this grave danger escape the statesmanship of Colombia, it certainly will not the attention of capital, which will be repelled rather than invited to an investment so hazardous.

Are not these views persuasive, that, above and beyond prejudices or passions of an hour, our two republics are bound to alliance for mutual protection by a fixed law, holding inexorably the penalty of calamity for either which may disregard it?

GEO. MANEY.

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CORRESPONDENCE NOT HERETOFORE COMMUNICATED TO CONGRESS.

Mr. Dichman to Mr. Evarts.

COLON, ASPINWALL, UNITED STATES OF COLOMBIA,
August 14, 1878. (Received August 23.)

SIR: In order to furnish the Department as speedily as possible with the information requested in the Department's dispatch No. 4, of the 26th ultimo, which I received before leaving the United States, I herewith forward a copy of the Official Gazette (Diario Oficial), containing the law of the Colombian Congress approving of the convention concluded between the United States of Colombia and the International Interoceanic Canal Company, and the decrees issued in accordance therewith. The paper and translation have been kindly furnished to me by Mr. B. Mozley, the general superintendent of the Panama Railroad Company, and the Pacific Mail Steamship Company.

* * * * * * *

Very, &c.,

ERNEST DICHMAN.

[Translation from the Diario Oficial of Bogota, Wednesday, May 22, 1878.]

Law 28th of 1878 (18th of May) "approving the contract for the construction of an interoceanic canal across Colombian territory."

The Congress of the United States of Colombia, after an examination of the contract, which is verbatim as follows:

CONTRACT FOR THE CONSTRUCTION OF AN INTEROCEANIC CANAL ACROSS COLOMBIAN TERRITORY.

Eustorgio Salgar, secretary of the interior and of foreign relations of the United States of Colombia, duly authorized, of the one part, and of the other part Lucien N. B. Wyse, chief of the Isthmus Scientific Surveying Expedition in 1876, 1877, and 1878, member and delegate of the board of directors of the International Interoceanic Canal Association, presided by General Etienne Türr, in conformity with powers bestowed at Paris, from the 27th to the 29th of October, 1877, have celebrated the following contract:

ARTICLE 1. The Government of the United States of Colombia grants to Mr. Lucien N. B. Wyse, who accepts it in the name of the civil International Interoceanic Canal Association, represented by their board of directors, the exclusive privilege for the construction across its territory, and for the operating of a canal between the Atlantic and Pacific oceans. Said canal may be constructed without restrictive stipulations of any kind.

This concession is made under the following conditions:

1st. The duration of the privilege shall be for ninety-nine years from the day on which the canal shall be wholly or partially open to public service, or when the grantees or their representatives commence to collect the dues on transit and navigation.

2d. From the date of approbation by the Colombia Congress for the opening of the interoceanic canal, the Government of the Republic cannot construct, nor concede to

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any company or individual, under any consideration whatever, the right to construct another canal across Colombian territory which shall communicate the two oceans. Should the grantees wish to construct a railroad as an auxiliary to the canal, the Government (with the exception of existing rights) cannot grant to any other company or individual, the right to build another interoceanic railroad, nor do so, itself, during the time allowed for the construction and use of the canal.

3d. The necessary studies of the ground, and the route for the line of the canal, shall be made, at the expense of the grantees, by an international commission of individuals and competent engineers, in which two Colombian engineers shall take part. The commission shall determine the general route of the canal and report to the Colombian Government directly, or to its diplomatic agents in the United States or Europe, upon the results obtained, at the latest in 1881, unless unavoidable circumstances clearly proven, should prevent their so doing. The report shall comprise in duplicate the scientific labors performed, and an estimate of the projected work.

4th. The grantees shall then have a period of two years to organize a universal joint stock company, which shall take charge of the enterprise, and of the construction of the canal. This term shall commence from the date mentioned in the preceding paragraph.

5th. The canal shall be finished and placed at the public service within the subsequent twelve years after the formation of the company which will undertake its construction, but the executive power is authorized to grant a further maximum term of six years in the case of encountering superhuman obstacles beyond the power of the company, and if after one-third of the canal is built, the company should acknowledge the impossibility of concluding the work in the said twelve years.

6th. The canal shall have the length, depth, and all other conditions requisite in order that sailing vessels and steamships measuring up to 140 meters long, 16 meters in width, and 8 meters in draught shall, with lowered topmasts, be able to pass the canal.

7th. All public lands which may be required for the route of the canal, the ports, stations, wharves, moorings, warehouses, and in general for the construction and service of the canal as well as for the railway, should it be convenient to build it, shall be ceded gratis to the grantees.

8th. These unoccupied public lands shall revert to the Government of the Republic with the railroad and canal at the termination of this privilege; there is also granted for the use of the canal a belt of land two hundred meters wide on each side of its banks throughout all the distance which it may run, but the owners of lands on its banks shall have free access to the canal and its ports as well as to the right of use of any roads which the grantees may open there; and this without paying any dues to the company.

9th. If the lands through which the canal shall pass, or upon which the railroad may be built, should, in whole or in part, be private property, the grantees shall have the right to demand their expropriation by the Government according to all the legal formalities in such cases. The indemnity which shall be made to the landowners, and which shall be based on their actual value, shall be at the expense of the company. The grantees shall enjoy in this case, and in those of temporary occupation of private property, all the rights and privileges which the existing legislation confers.

10th. The grantees may establish and operate at their cost the telegraph lines which they may consider useful as auxiliaries in the building and management of the canal.

ART. 2. Within the term of twelve months after the international commission shall have presented the result of their definite surveys, the grantees will deposit in the bank or banks of London, which the national executive power may designate, the sum of seven hundred and fifty thousand francs as security for the accomplishment of the work. The receipt of said bank or banks shall be a voucher of the fulfillment of said engagement. The deposit shall be made in certificates of the foreign debt of Colombia, at the current market price on the day of delivery. It is understood that should the grantees forfeit this deposit by virtue of the provisions of clause 2, article 22, of this contract, the said sum with its interest shall become the sole property of the Colombian Government. On the conclusion of the canal the amount deposited as security shall remain to the credit of the treasury, as indemnity to the national Government for the expenses incurred in the erection of buildings for the use of public offices.

ART. 3. Should the route of the canal from one ocean to the other pass to the west and to the north of the imaginary straight line which connects Cape Tiburon with Garachine Point the grantees must make a friendly arrangement with the Panama Railroad Company, or pay an indemnity, which shall be determined in accordance with the provisions of law 46, of August 16, 1867, "which approves the contract celebrated July 5, 1867, reformatory of that of April 15, 1850, for the construction of a railroad from ocean to ocean across the Isthmus of Panama."

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In case the international commission selects the Atrato, or some other stream now navigable, as one of the entrances of the canal, the canalized mouth shall be considered as one of the parts of the principal work, and maintained in equally good condition. River navigation in the upper part of the stream, so far as it has not for its object the use of the canal, shall be open to commerce and free from all dues.

ART. 4. In addition to the lands granted by paragraphs 7 and 8 of article 1, these are gratuitously given to the grantees, and at their choice five hundred thousand hectares of the unoccupied public lands, with the mines which they may contain. This allotment shall be made directly by the national executive power. The public lands situated on the seacoast, or on the border of the canal, or at the rivers, shall be divided as closely as possible in alternate lots between the Government and the company, forming, if the ground will permit, areas of one and two thousand hectares. The measurement for the allotment or location shall be made at the cost of the guarantees, and with the intervention of the commissioners of the Government.

Unoccupied lands so granted, with the mines which they may hold, shall be awarded to the grantees as soon as they request them after the deposit of the security. In a belt of two myriameters on each side of the canal, and during five years after the conclusion of the work, the Government cannot transfer other lands beyond the said lots until the company shall have obtained the whole of the lands which are granted to it gratuitously.

ART. 5. The Government of the Republic declares neutral, for all time, the ports of each terminus of the canal and the waters of the latter from one sea to the other, and, consequently, in case of war between other nations or between one or more of these and Colombia, the transit of the canal shall not be interrupted on that account, and the merchant vessels and individuals of all nations of the world may enter said ports and navigate the canal without let or hinderance. In general, any ship whatever may navigate the canal freely without discrimination, exclusion, or preference of persons or nationalities, by paying the dues and abiding by the regulations laid down by the company for the use of said canal and its dependencies. Exception is made of foreign troops, which can not pass without permission from Congress.

ART. 6. The entrance to the canal shall be rigorously prohibited to the war vessels of those nations which are at war and to those whose destination manifests their intention to take part in hostilities.

ART. 7. The grantees will enjoy the right, during the whole time of the privilege, to use the ports at the termini of the canal, as well as intermediate points, for the anchorage and repair of ships, and the loading, depositing, transshipping, or landing of merchandise. The ports of the canal shall be open and free to the commerce of all nations, and no import duties shall be exacted, except on merchandise destined to be introduced for the consumption of the rest of the Republic. The said ports shall, therefore, be open to importations from the commencement of the work, and the custom-houses and the revenue service which the Government may deem convenient for the collection of duties on merchandise destined for other portions of the Republic shall be established, in order to prevent introduction of smuggled goods.

ART. 8. The executive power shall issue the necessary regulations for the protection of its revenue by preventing smuggling, and shall appoint the number of men necessary for this service at its own expense. Of the employés indispensable for this, ten shall be paid by the company, and their salaries shall not exceed those paid to officials of the same grade in the custom-house at Barranquilla. When necessary, the company shall transport, free of charge by the canal or by the auxiliary railroad, the men at the service of the union or destined for police duty, with the object of guarding public service without or preserving public order within. If the company should not own ships or tugs, they shall pay the passage of these men across the isthmus. The sustenance of the public force necessary for the security of the interoceanic transit shall also be at the expense of the company.

ART. 9. The grantees shall have the right to introduce, free of import or other duties of whatever class, all the instruments, machinery, tools, fixtures, provisions, clothing for laborers which they may need during all the time allowed to them for the construction and use of the canal. The ships carrying cargoes for the use of the enterprise shall enjoy free entry into whatever point shall afford them easy access to the line of the canal.

ART. 10. No taxes, either national, municipal, of the State, or of any other class, shall be levied upon the canal, the ships that navigate it, the tugs and vessels at the service of the grantees, their warehouses, workshops and offices, factories of whatever class, storehouses, wharves, machinery, or other works or property of whatever character belonging to them, and which they may need for the service of the canal and its dependencies, during the time conceded for its construction and operation. The grantees shall also have the right to take from unoccupied lands the materials of any kind which they may require without paying any compensation for the same.

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ART. 11. The passengers, money, precious metals, merchandise and articles and effects of all kinds which may be transported over the canal shall also be exempt from all duties, national, municipal, transit, and others. The same exemption is extended to all articles and merchandise for interior or exterior commerce which may remain in deposit, according to the conditions which may be stipulated, with the company in the storehouses and stations belonging to them.

ART. 12. Ships desiring to cross the canal shall present at the port of the terminus of the canal at which they may arrive their respective registers and other sailing papers prescribed by the laws and public treaties, so that the vessels may navigate without interruption. Vessels not having said papers, or which should refuse to present them, may be detained and proceeded against according to law.

ART. 13. The Government allows the immigration and free access to the lands and workshops of the grantees of all employés and laborers, of whatever nationality, contracted for the enterprise, or who may come to engage themselves in the service of the canal, on condition that such employés or laborers submit to existing laws and to the regulations established by the company. The Government assures them aid and protection and the enjoyment of their rights and privileges, according to the constitution and laws of the nation, during the time they live in Colombian territory.

ART. 14. As a compensation to the grantees for the expenses of the building, preservation, and operation of the canal, which are for their account, they shall have the right during all the period of this privilege to charge and collect for passage over the canal, and the ports dependent upon it, dues for light-house, anchorage, transit, navigation, repairs, pilotage, towing, hauling, storage, and station, as per the tariffs they may establish, and which may be modified at any time under the following express conditions:

1st. These dues shall be imposed without exception or favor upon all ships in identical conditions.

2d. The tariff shall be published four months before going into operation in the Diario Oficial of the Government, as well as in the capitals and principal commercial ports of the countries affected thereby.

3d. The principal dues to be collected on vessels shall not exceed the rate of ten francs for each cubic meter, resulting from the multiplication of the principal dimensions of the submerged portion of the ship in transit (length, breadth, and draught).

4th. The principal dimensions of the ship in transit, that is to say, the greatest exterior length and beam of vessel, as well as the greatest draught of water, shall be nautical dimensions, inserted in the official clearance papers, with the exception of such modifications as may result in the course of the voyage. The captains of ships and agents of the company may require a new measurement to be taken, which operation shall be effected at the expense of the solicitor.

5th. The same measurement, that is to say, the parallelopiped described by the submerged part of the ship, shall serve as the basis for the determination of the other accessory charges.

6th. Special dues for navigation shall be reduced in proportion to the excess when the net profits derived therefrom shall exceed 12 per cent. of the capital employed in the enterprise.

ART. 15. By way of compensation for the right and exemptions which are conferred upon the grantees by this contract, the Government of the Republic shall enjoy a participation equal to 5 per cent. of the gross earning which shall accrue to the enterprise, as per the tariff to be fixed by the company.

ART. 16. The grantees are authorized to require payment in advance of any charges which they may establish; nine-tenths of these charges shall be made payable in gold, and only the remaining one-tenth part shall be payable in silver of twenty-five grammes, of a fineness of 900.

ART. 17. The ships which shall infringe upon the rules established by the company shall be subject to the payment of a fine which said company shall fix in its regulations, of which due notice shall be given to the public at the time of the issue of the tariff. Should they refuse to pay said fine, nor furnish sufficient security, they may be detained and prosecuted according to the laws. The same proceedings may be observed for the damages they may have caused.

ART. 18. If the opening of the canal shall be deemed financially possible, the grantees are authorized to form, under the immediate protection of the Colombian Government, a universal joint-stock company, which shall undertake the execution of the work, taking charge of all financial transactions which may be needed. As this enterprise is essentially international and for public utility, it is understood that it shall always be kept free from political influences.

The company shall take the name of "The Universal Interoceanic Canal Association;" its residence shall be fixed in Bogota, New York, London, or Paris, as the grantees may choose; branch offices may be established wherever necessary. Its contract, shares, bonds, and titles of its property shall never be subjected by the

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Government of Colombia to any charges for registry, emission, stamps, or any similar imposts upon the sale or transfer of these shares or bonds, as well as on the profits produced by these values.

ART. 19. The company is authorized to reserve as much as 10 per cent. of the shares emitted, to form a fund of shares, to the benefit of the founders and promoters of the enterprise. Of the products of the concern, the company take, in the first place, what is necessary to cover all expenses of repairs, operations, and administration, and the share which belongs to the Government, as well as the sums necessary for the payment of the interest and the amortization of the bonds, and, if possible, the fixed interest or dividend of the shares; that which remains will be considered as net profit, out of which 80 per cent. at least shall be divided among the shareholders.

ART. 20. The Colombian Government, should it consider it important, may name a special commissioner in the board of directors of the company. This delegate shall enjoy all the advantages conceded to the other directors by the statutes of the company. The grantees are obliged to appoint in Bogota, near the National Government, an agent duly authorized to resolve all doubts and to present all demands to which this contract may give rise. Reciprocally, and with the same intention, the Government shall name a resident agent in the principal establishment of the company on the canal. In every case the difficulties which may arise between the contracting parties shall be submitted to a committee of arbitrators, composed of four individuals, two of whom shall be selected by the executive power from among the members of the federal supreme court, and the other two named by the company. In case of a tie in the votes of this committee, the said arbitrators shall name a fifth party. The decision pronounced by this tribunal shall be final.

ART. 21. The grantees, or those who in the future may succeed them in their rights, may transfer those rights to other capitalists or financial companies, but it is absolutely prohibited to cede or mortgage them under any considerations whatever to any nation or foreign government.

ART. 22. The grantees or their representatives shall forfeit their acquired rights in the following cases:

1st. If they do not deposit within the term stipulated the amount required as security for the execution of the work.

2d. If in the first of the twelve years allowed for the construction of the canal the work is not already begun. In this case the company shall forfeit the sum deposited as a guarantee, and which shall go to the benefit of the Republic.

3d. If at the termination of the period fixed by paragraph fifth of article 1 the canal is not navigable.

4th. If they do not comply with the provisions of article 21.

5th. If the service of the canal should be interrupted without some superhuman obstacle.

In cases 2, 3, 4, and 5, the federal supreme court shall decide whether the privilege has become null or not.

ART. 23. In all cases of declaration of nullity, the public lands mentioned in paragraphs 7 and 8 of Article 1, and those not alienated among those conceded in article 4, will return to the possession of the Republic in the state in which they are found, and without any indemnity whatever, and also the buildings, materials, works, and improvements of which the grantees hold possession in the canal. These shall reserve only their capital, vessels, provisions, and in general their movable property.

ART. 24. Five years previous to the expiration of the ninety-nine years of the privilege, the executive power shall appoint a commissioner to examine the condition of the canal and annexes, and, with the knowledge of the company or its agents on the Isthmus, to make an official report, describing in every detail the condition of the same and pointing out what repairs may be necessary. This report will serve to establish in what condition the canal and its dependencies shall be delivered to the National Government on the day of expiration of the privilege now granted.

ART. 25. The enterprise of the canal is reputed to be of public utility.

ART. 26. This contract, which will serve as a substitute for the provisions of law 33, of May 26, 1876, and the clauses of the contract celebrated on the 28th of May of the same year, shall be submitted for the approval of the President of the Union and the definite acceptance by the Congress of the nation.

In witness whereof they sign the present in Bogota, on the 20th March, 1878.

EUSTORGIO SALGAR.
LUCIEN N. B. WYSE.

Approved. BOGOTA, *March 23, 1878.*

The President of the Union.

AQUILEO PARRO.

The secretary of the interior and of foreign relations.

EUSTORGIO SALGAR.

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The foregoing contract is hereby approved, with the following modifications:

Article 1, with the addition of the following paragraph:

§—"It is, however, stipulated and agreed that if, before the payment of the security determined upon in article 2, the Colombian Government should receive any formal proposal, sufficiently guaranteed, in the opinion of the said Government, to construct the canal in less time and under more advantageous conditions for the United States of Colombia, said proposal shall be communicated to the grantees or their representatives, that they may be substituted therein, in which case they shall be preferred; but if they do not accept said substitution, the Colombian Government, in the new contract which they may celebrate, shall exact, besides the guarantee mentioned in article 2, the sum of three hundred thousand dollars in coin, which shall be given as indemnity to the grantees."

Article 2, thus:

"ART. 2. Within the term of twelve months from the date at which the international commission shall have presented the definite results of their studies, the grantees shall deposit in the bank or banks of London, to be designated by the national executive power, the sum of seven hundred and fifty thousand francs, to the exclusion of all paper money, as security for the execution of the work. The receipt of said banks shall be a voucher for the fulfillment of said deposit. It is understood that if the grantees should lose that deposit by virtue of the stipulations contained in clauses 2 and 3 of Article 22 of the present contract, the sum referred to, with interest accrued, shall become *in toto* the property of the Colombian Government. After the conclusion of the canal, said sum, without interest, which latter will in this case belong to grantees, shall remain for benefit of the treasury, for the outlays which it may have incurred or may incur in the construction of buildings for the service of the public officers."

Article 3, thus:

"ART. 3. If the line of the canal to be constructed from sea to sea should pass to the west and to the north of the imaginary straight line which joins Cape Tiburon with Garachiné Point, the grantees must enter into some amicable arrangement with the Panama Railroad Company, or pay an indemnity, which shall be established in accordance with the provisions of law 46, of August 16, 1867, 'approving the contract celebrated on July 5, 1867, reformatory of the contract of April 15, 1850, for the construction of an iron railroad from one ocean to the other through the Isthmus of Panama.'

"In case the international commission should choose the Atrato or some other stream already navigable as one of the entrances to the canal, the ingress and egress by such stream, and the navigation of its waters, so long as it is not intended to cross the canal, shall be open to commerce and free from all imposts."

Article 4, thus:

ART. 4. Besides the lands granted in paragraphs 7 and 8 of Article 1, there shall be awarded to the grantees, as an aid for the accomplishment of the work, and not otherwise, five hundred thousand hectares of public lands, with the mines they may comprise, in the localities which the company may select. This award shall be made directly by the national executive power. The public lands situated on the seacoast, on the borders of the canal or of the rivers, shall be divided in alternate lots between the Government and the company, forming areas of from one to two thousand hectares. The measurements for the allotment or locating shall be made at the expense of the grantees and with the intervention of Government commissioners. The public lands thus granted, with the mines they may hold, shall be awarded to the grantees as fast as the work of construction of the canal progresses, and in accordance with rules to be laid down by the executive power.

"Within a belt of two myriameters on each side of the canal, and during five years after the termination of the work, the Government shall not have the right to grant other lands beyond the said lots until the company shall have called for the whole number of lots granted by this article."

Article 5, thus:

"ART. 5. The Government of the Republic hereby declares the ports at each end of the canal, and the waters of the latter from sea to sea, to be neutral for all time; and consequently in case of war among other nations, the transit through the canal shall not be interrupted by such event, and the merchant vessels and individuals of all nations of the world may enter into said ports and travel on the canal without being molested or detained. In general, any vessel may pass freely without any discrimination, exclusion, or preference of nationalities or persons, on payment of the dues and the observance of the rules established by the company for the use of the canal

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and its dependencies. Exception is to be made of foreign troops, which shall not have the right to pass without permission from Congress, and of the vessels of nations which, being at war with the United States of Colombia, may not have obtained the right to pass through the canal at all times, by public treaties wherein is guaranteed the sovereignty of Colombia over the Isthmus of Panama and over the territory whereon the canal is to be cut, besides the immunity and neutrality of the said canal, its ports, bays, and dependencies and the adjacent seas."

Article 6, thus:

"ART. 6. The United States of Colombia reserves to themselves the right to pass their vessels, troops, ammunitions of war at all times and without paying any dues whatever. The passage of the canal is strictly closed to war vessels of nations at war, and which may not have acquired, by public treaty with the Colombian Government, the right to pass by the canal at all times."

Article 8, thus:

"ART. 8. The executive power shall dictate, for the protection of the financial interests of the Republic, the regulations conducive to the prevention of smuggling, and shall have the power to station, at the cost of the nation, the number of men which they may deem necessary for that service.

"Out of the indispensable officials for that service, ten shall be paid by the company, and their salaries shall not exceed those enjoyed by employés of the same rank in the Barranquilla custom-house.

"The company shall carry gratis through the canal, or on the auxiliary railway, the men destined for the service of the nation, for the service of the State through whose territory the canal may pass, or for the service of the police, with the object of guarding against foreign enemies, or for the preservation of public order, and shall also transport gratis the baggage of such men, their war materials, armament, and clothing which they may need for the service assigned to them.

"The subsistence of the public force which may be deemed necessary for the safety of the interoceanic transit shall likewise be at the expense of the company."

Article 13, thus:

"ART. 13. The Government allows the immigration and free access to the lands and shops of the grantees of all the employés and workingmen of whatever nationality, who may be contracted for the work, or who may come to engage themselves to work on the canal, on condition that such employés or laborers shall submit to the existing laws, and to the regulations established by the company. The Government promises them support and protection, and the enjoyment of their rights and guarantees, in conformity with the national constitution and laws, during the time they may sojourn on Colombian territory.

"The *national peons* and laborers employed on the work of the canal shall be exempt from all requisition of military service, national as well as of the State."

Article 14, thus:

"ART. 14. In order to indemnify the *grantees* of the construction, maintenance, and working expenses incurred by them, they shall have, during the whole period of the privilege, the exclusive right to establish and collect for the passage of the canal and its ports, the dues for light-houses, anchorage, transit, navigation, repairs, pilotage, towage, hauling, storage, and of station according to the tariff which they may issue, and which they may modify at any time, under the following express conditions:

"1st. They shall collect these dues, without any exceptional favor, from all vessels in like circumstances.

"2d. The tariffs shall be published four months before their enforcement in the Diario Oficial of the Government, as well as in the capitals and the principal commercial ports of the countries interested.

"3d. The principal navigation dues to be collected shall not exceed the sum of ten francs for each cubic meter resulting from the multiplication of the principal dimensions of the submerged part of the ship in transit (length, breadth, and draught).

"4th. The principal dimensions of the ship in transit, that is to say, the maximum exterior length and breadth at the water line, as well as the greatest draught, shall be the metrical dimensions inserted in the official clearance papers, excepting any modifications supervening during the voyage. The ship's captains and the company's agents may demand a new measurement, which operations shall be carried out at the expense of the petitioner, and,

"5th. The same measurement, that is to say, the number of cubic meters contained in the parallelopipedon circumscribing the submerged part of the ship, shall serve as a basis for the determination of the other accessory dues."

Article 15, thus:

"ART. 15. By way of compensation for the rights and exemptions which are allowed to the grantees in this contract, the government of the republic shall be enti-

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tled to a share amounting to five per cent on all collections made by the company, by virtue of the dues which may be imposed in conformity with article 14, during the first twenty-five years after the opening of the canal to the public service. From the twenty-sixth up to the fiftieth year, inclusive, it shall be entitled to a share of six per cent; from the fifty-first to the seventy-fifth to seven per cent, and from the seventy-sixth to the termination of the privilege to eight per cent. It is understood that these shares shall be reckoned, as has been said, on the gross income from all sources, without any deductions whatever for expenses, interest on shares, or on loans or debts against the company. The government of the republic shall have the right to appoint a commissioner or agent, who shall intervene in the collections, and examine the accounts, and the distribution or payment of the shares coming to the government shall be made in due half-yearly installments. The product of the five, six, seven, and eight per cent shall be distributed as follows:

"Four-fifths of it shall go to the government of the republic, and the remaining one-fifth to the government of the state through whose territory the canal may pass."

"The company guarantees to the Government of Colombia that the share of the latter shall in no case be less than the sum of two hundred and fifty thousand dollars a year, which is the same as that received as its share in the earnings of the Panama Railroad, so that if in any year the five per cent share should not reach said sum, it shall be completed out of the common funds of the company."

Article 20, thus:

"ART. 20. The Colombia Government may appoint a special delegate in the board of directors of the company whenever it may consider it useful to do so. This delegate shall enjoy the same advantages as are granted to the other directors by the by-laws of the company.

"The grantees pledge themselves to appoint in the capital of the union, near the national government, a duly authorized agent for the purpose of clearing up all doubts and presenting any claims to which this contract may give rise. Reciprocally and in the same sense, the government shall appoint an agent, who shall reside in the principal establishment of the company situated on the line of the canal; and, according to the national constitution, the difficulties which may arise between the contracting parties shall be submitted to the decision of the federal supreme court."

Article 22, thus:

"ART. 22. The grantees, or their representatives, shall lose the right hereby acquired in the following cases:

"1st. If they do not deposit, on the terms agreed upon, the sum which by way of security must insure the execution of the work;

"2d. If, in the first year of the twelve that are allowed for the construction of the canal, the works are not already commenced, in this case the company shall lose the sum deposited by way of security, together with the interest that may have accrued; all of which will remain for the benefit of the republic;

"3d. If, at the end of the second period fixed in paragraph 5 of article 1, the canal is not transitable, in this case also the company shall lose the sum deposited as security; which, with the interests accrued, shall remain for the benefit of the republic;

"4th. If they violate the prescriptions of article 21; and,

"5th. If the service of the canal should be interrupted for a longer period than six months without its being occasioned by the acts of God, &c.

"In cases 2, 3, 4, and 5, the federal supreme court shall have the right to decide whether the privilege has become annulled or not."

Article 23, thus:

"ART. 23. In all cases of decisions of nullity, the public lands mentioned in clauses 7 and 8 of article 1, and such lands as are not settled or inhabited from among those granted by article 4, shall revert to the possession of the republic in the condition they may be found in, and without any indemnity whatever, as well as the buildings, materials, works, and improvements which the grantees may possess along the canal and its accessories. The grantees shall only retain their capital, vessels, provisions, and in general all movable property."

Given at Bogota on the seventeeth day of May, eighteen hundred and seventy-eight.

The president of the senate of plenipotentiaries: RAMON GOMEZ.

The president of the chamber of representatives: BELISARIO ESPONDA.

The secretary of the senate of plenipotentiaries: JULIO E. PEREZ.

The secretary of the chamber of representatives: ENRIQUE GAOUA.

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BOGOTA, *May 18, 1878.*

Let it be published and enforced.

The president of the union:

[SEAL.] JULIAN TRUJILLO.

The secretary of the interior and foreign relations:

FRANCISCO J. ZALDUA.

Note from Mr. Lucien N. B. Wyse, wherein he declares he accepts all the modifications made by law 28 to the contract for the construction of the interoceanic canal.

To the honorable Secretary of the Interior and Foreign Relations:

I have the honor to inform you that I accept each and all of the modifications introduced by Congress to the contract which I celebrated with Señor Eustorgio Salgar, your worthy predecessor in the department of the interior and foreign relations, for the construction of the interoceanic canal, which contract was approved by the executive power under date of March 23 last.

The modifications to which I have alluded are those recorded in law No. 28 of the 18th instant.

I hasten to lay this declaration before the Government of Colombia, so that it may be taken in consideration, in order that said law may be effective in all its parts.

Bogota, May 18, 1878.

LUCIEN N. B. WYSE,
Chief of the International Scientific Commission for the Survey of the Isthmus, Member and Delegate from the Board of Directors of the Interoceanic Canal Association.

Mr. Dichman to Mr. Evarts.

No. 17.] LEGATION OF THE UNITED STATES,
Bogota, October 30, 1878. (Received December 10.)

SIR: Before leaving the United States my attention was called, at the Department, to the subject of an extradition treaty with this country. The inclosed copies of correspondence will show to the Department what I have done in this matter, upon which I desire to make the following observations:

The Department will learn from the inclosed papers that in my intercourse with the Colombian Government I have treated the general subject of extradition as entirely separate from the right to bring criminals across the Isthmus of Panama. The latter is a matter of importance to the Government of the United States, and, I think, ought to be settled in the direction indicated in my letter to the secretary of foreign relations of Colombia. In my conversations with him on this subject I have endeavored to impress him fully with the following points, viz:

1. That extradition of criminals is no longer a measure of exceptional gravity, but that as nations have extended and multiplied their relations they have realized the necessity of mutually aiding each other in the repression of offenses against the laws of universal morality and justice.

2. That the transit across a nation's territory can not be considered in the light of extradition, on the ground that a criminal brought to the borders of a State under compulsion, for the purpose of transit, can not be compared to one who voluntarily seeks an asylum there under the protection of its laws, and for the surrender of whom the power of the State has to be invoked.

3. That aside from the general principle stated in the aforesaid No. 2 (and to avoid difficulties arising under the constitution of Colombia), the

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right of transit guaranteed to the Government of the United States by the treaty of 1846, clearly embraces the transfer or transit of criminals by the Government of the United States.

4. That the right of transit being guaranteed to the Government of the United States by treaty prior to the adoption of the constitution of the United States of Colombia, no possible benefit of its "bill of rights" can inure to a criminal to be taken across the Isthmus of Panama by the Government of the United States.

The main issue between the secretary of foreign relations and myself is as to what papers or proofs, in the case of a criminal brought by the Government of the United States to the Isthmus of Panama, for transit, are to be exhibited to the Government of Panama as the constitutional agent of the Government of the United States of Colombia, it being inadmissible, in my opinion, for the United States to consent to the exercise of any discretion whatever on the part of the Government of Panama, while the secretary of foreign relations contends, as shown in his conditions 2 and 3, for a discretion to refuse the transit.

As to the general subject of an extradition treaty with this country, I do not deem it advisable to negotiate one at present, but will keep the question before the Colombian Government, and continue to discuss the same informally, in order that a treaty may be negotiated at any time the Department may deem advisable. I do not believe that the Colombian Government, if an extradition treaty were negotiated and ratified, would be able to carry it out at all times. The want of a federal judiciary and federal officers in the different States, and the necessity of relying upon the State governments to execute an international agreement, produces complications wherever the State and federal governments are in the hands of parties opposed to each other. A demand might be made upon the Colombian Government, under the terms of a treaty, for the surrender of a criminal, with which it could not comply even with the greatest disposition on the part of the Government to fulfill its agreement, thus giving rise to misunderstandings between the two Governments, which had best be avoided.

* * * * * * *

I am, &c.,

ERNEST DICHMAN.

[Inclosure 1 in No. 17.—Translation.]

BOGOTA, *October 24, 1878.*

SIR: In conformity with the understanding in our interview of to-day, I have the honor to address you, with the object of informing you that the Colombian Government does not deem it inconvenient to execute with that of the United States of America an extradition treaty, which will be in conformity with the principles generally admitted by the writers (publicists) upon this matter, and adopted usually in conventions of this nature.

Respecting the transport across the Isthmus of Panama of individuals, the extradition of which has been obtained by the United States from other countries, in accordance with the respective treaties, the Colombian Government will consent thereto under the following conditions:

1. That the crime shall be among those mentioned in the extradition treaty to be executed between the United States of America and Colombia.
2. That there be presented to the government of the State of Panama the documents on which the extradition is based.
3. That said government may refuse the transit when in its opinion the extradition is not justified by the documents which have been presented.

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4. That the custody of the criminals will be by the armed forces of the nation or of the State of Panama.

I am the honorable minister's, with all consideration, very attentive and obedient servant,

PABLO AROSEMENA.

Hon. ERNEST DICHMAN,
Minister Resident of the United States of America.

[Inclosure 2 in No. 17.]

LEGATION OF THE UNITED STATES,
Bogota, October 25, 1878.

SIR: It affords me pleasure to acknowledge the receipt of the Hon. Pablo Arosemena's note of yesterday, on the subject of the extradition of criminals from the United States of Colombia, and the conditions under which the Colombian Government will permit the transit of criminals across the Isthmus of Panama.

The Government of the United States of America will undoubtedly be gratified to learn of the readiness with which the Government of the United States of Colombia is willing to enter upon this negotiation, and I shall ask for instructions concerning the same.

Before, however, submitting to the Government at Washington the conditions under which the Colombian Government is willing to permit the transit of criminals extradited by the United States across the Isthmus of Panama, I would respectfully invite the attention of the honorable secretary in charge of the foreign relations to the following propositions, which are made informally, in order that in the discussion thereof the principles underlying this question may be fully developed, and a result reached which, while acknowledging and keeping within the rights of sovereignty of the United States of Colombia, will give to my Government a safe and practical method of accomplishing the object in question:

1st. The question of transporting across the Isthmus of Panama criminals of the United States of America extradited from foreign countries, or taken from one port of the United States to another, is simply a question of the regulation of the right of transit provided by article 35 of the treaty of 1846, and in the discussion of this question the general principles applicable to extradition treaties do not enter.

2d. The transit of such criminals from countries other than the United States of America shall be permitted upon the exhibition to the government of the State of Panama, as the agent of the Government of the United States of Colombia, of the warrant of extradition or other document on which such criminals have been surrendered.

3d. The transit of such criminals from one part of the United States to another shall be permitted upon the exhibition of the warrant of arrest, or a certified copy of the indictment under which such criminals are held, to the government of the State of Panama, as the agent of the Government of the United States of Colombia.

4th. Upon the application of the consul of the United States of America to the government of the State of Panama, as the agent of the Government of the United States of Colombia, the officers in charge of such criminals may be appointed officers of the United States of Colombia for the purpose of conducting such criminals across the Isthmus of Panama; otherwise the custody of such criminals will be by the officers of the United States of Colombia, who will then be responsible for their safe-keeping.

A careful reading of paragraph 1 of article 35 of the treaty of 1846 leads me to the conclusion expressed in the first of the above propositions. The right of transit is not only guaranteed to the citizens of the United States and their merchandise, but also to the Government, and the Government can not enjoy the right of way or transit across the Isthmus of Panama except in the exercise of one of its functions, and the function with which we are now concerned is the one of bringing back criminals to the place where the crime was committed in order that they shall be tried and, if found guilty, punished. This is a duty for the protection of society, in the prompt discharge of which the United States of Colombia, in fact the whole world, are equally interested with the Government of the United States of America, and for the better performance of which it might some time be desirable for the Government of the United States of America to make use of the right of transit guaranteed to it by article 35 of the treaty of 1846.

If the honorable secretary should arrive at the same conclusions with myself, then the only remaining question would be as to how this right of transit is to be exercised. For my views on this branch of the question, I beg leave to call the honorable

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secretary's attention to my propositions 2, 3, and 4. By the acceptance of 2 and 3 the rights of persons would be sufficiently protected, and No. 4 would guard against any infringement of the sovereignty of the United States of Colombia. On this point I am satisfied that the honorable secretary agrees with me that it is not to be supposed that there should be any desire on the part of the Government of the United States of America, even for the purpose of exercising a function of government by which the good order of society is maintained, to infringe in the slightest degree upon the rights of sovereignty which the United States guarantees in the same article of the treaty of 1846, which secures and guarantees to the United States and the Government thereof the right to transit.

In the interviews which I have had with the honorable secretary on this subject I have become convinced that he takes a statesmanlike view of the question, endeavoring to reconcile his ideas of duty to constitutional law with the equally high duty to humanity and social order.

It is with this spirit that the above propositions are submitted for his consideration, and I feel satisfied that in further personal conferences on this subject an understanding will be arrived at which I can recommend to my Government as the basis for a treaty, and which will show to the world that the United States of Colombia is always ready to contribute its share in the family of nations towards the good order and regulation of society.

I avail myself of this occasion to renew to the honorable secretary the assurances of my high consideration.

ERNEST DICHMAN.

Mr. Dichman to Mr. Evarts.

No. 48.] LEGATION OF THE UNITED STATES,
Bogota, February 15, 1879. (Received March 28.)

SIR: Since the date of my No. 35 I have had repeated conferences with the secretary of foreign relations on the subject of the right of transit guaranteed to the Government of the United States by the thirty-fifth article of the treaty of 1846. In these conferences, I have discussed with him the origin of, and reason for, the thirty-fifth article, and have applied to the words, "The Government of New Granada guarantees to the Government of the United States that the right of way or transit across the Isthmus of Panama shall be open and free to the Government of the United States," every possible rule of construction. The more I study the question in all its details, the more I become confirmed in the views which I have expressed in my No. 17.

The difficulty in the way of the Colombian secretary of foreign relations may be stated as follows:

The erroneous view taken by his predecessor, as stated in his communication addressed to the department under date of July 1, 1878. To this view, and all its mistaken inferences regarding the Colombian constitution, the present secretary of foreign relations appears to attach perhaps undue importance, either as a matter of consistency in the administration of his department, or from too great a deference to the opinions of a gentleman who for many years occupied a position of prominence in the politics of this Republic.

* * * * * * *

I am, &c.,

ERNEST DICHMAN.

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[Inclosure 1 in No. 48.]

Mr. Dichman to Mr. Arosemena.

LEGATION OF THE UNITED STATES,
Bogota, January 21, 1879.

SIR: Under instructions from my Government I beg leave to call the attention of the honorable secretary of foreign relations to the action of the government of the State of Panama in refusing the right of transit across the Isthmus of Panama to a duly commissioned officer of the United States in charge of an extradited criminal from the Republic of Peru, and to the further action of said government of the State of Panama in releasing such prisoner and placing him at liberty.

As previous to the receipt of instructions on this matter, the same has been discussed informally by the honorable secretary and myself, I do not deem it necessary to dwell upon the same at length in this note, but only beg leave to add that I am directed to invite his earnest attention to this cause of difference between the two Governments, for in the action of the Colombian Government by its agent, the government of the State of Panama, on the occasion above stated, my Government does not find either an exhibition of that spirit of friendship which has always animated the relations between the two nations, or a compliance with the guaranty to the Government of the United States contained in the thirty-fith article of the treaty of 1846, by which the right of way or transit across the Isthmus of Panama shall be open and free, not only to the citizens but also to the Government of the United States.

With the history of that article of the treaty, the obligation assumed by the United States, and the manner in which the same has been discharged, the honorable secretary is quite familiar; therefore I shall not trouble him with a statement thereof on this occasion.

As the honorable secretary has expressed to me his anxiety that this cause of difference between the two countries should be removed, I would request the honor of a personal conference with him at as early a day as may suit his convenience for the purpose of reaching a common accord on this question.

With the assurance of the highest consideration,
I have, &c., ERNEST DICHMAN.

[Inclosure 2 in No. 48.—Translation.]

Mr. Arosemena to Mr. Dichman.

UNITED STATES OF COLOMBIA,
DEPARTMENT OF THE INTERIOR AND FOREIGN RELATIONS,
Bogota, January 24, 1879.

I have had the honor to receive the note which your honor has addressed me under date of the 21st instant for the purpose of calling the attention of the Colombian Government toward the fact that there had been placed in liberty, by order of the president of the State of Panama, C. G. Scrafford, accused of forgery, who was being taken to the United States of America by way of the Isthmus, by Señor W. F. Clayton, vice-consul of the United States at Callao.

Your honor manifests in the same note that the Government of the United States of America has not found in the conduct of that of the Colombian Union the same spirit of loyal friendship which has always prevailed in the relations which the two nations cultivate, and that this conduct impairs the rights which the American Union acquired by the 35th article of the treaty which it executed with the Republic in 1846. Your honor concludes with soliciting a conference with the undersigned in order to consider the question and terminate it in a mutual satisfactory manner.

I see myself obliged here to repeat that which was said from this office under date of the 1st of July last upon the same subject to the honorable Secretary of Foreign Relations of the United States of America.

The compliance with the constitution of the Republic is the first of the duties of the Government of the Union and of its agents in the States. Among other rights, not less precise, the fundamental code of this country recognizes and guarantees to the persons which cross its territory personal security in such a manner that they may not be confined without being heard and convicted in court in accordance with preexisting law. To keep Scrafford a prisoner, who had committed no crime in Colombian territory, nor had been heard or convicted in court according to law, would be

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to violate in him the personal security and for the same the constitution which recognizes and guarantees this right. In decreeing his liberty, the president of the State of Panama barely complied with his written duties, and bowed before definite precepts of our constitutional law.

The fact of placing Scrafford in liberty, which, as has been seen, was necessary in view of the constitution of the Republic, is no violation of the thirty-fifth article of the treaty of 1846, executed between New Granada and the United States of America, yet in force. The article refers only to the franchises, privileges, and immunities of a mercantile nation, and the right of transit, which is then conceded across the Isthmus of Panama to the citizens and to the Government of the United States, does not comprise the transportation of criminals through our territories with an evident violation of our political institutions.

The Government of the American Union ought not therefore to see in the proceeding of that of Colombia (which had caused this correspondence) a relaxation of the ties of friendship which happily exist between the two countries. These ties have been created by the similarity of institutions and the well-understood interests of the two people, and far from weakening them, they will, without doubt, grow stronger with the march of time.

As I have had the honor to say to your honor on several occasions, the Colombian Government finds itself disposed to execute, with that of the American Union, a convention which fixes and regulates the right of transit across the Isthmus of Panama, conceded to said country by the thirty-fifth article of the treaty of 1846, in a way which takes into consideration the sovereighty of Colombia in that territory and the just aspirations of the Cabinet of Washington.

In order to consider this matter, I will hold in the shortest time possible the conference which your honor proposes, the result of which will not be less than mutually satisfactory.

With sentiments of distinguished consideration, &c.,

PABLO AROSEMENA.

Mr. Dichman to Mr. Evarts.

No. 58.] LEGATION OF THE UNITED STATES,
Bogota, March 17, 1879. (Received April 14.)

SIR: The inclosed copy of a protocol, and translation of the same, on the subject of the right of transit across the Isthmus of Panama, guaranteed to the Government of the United States by the 35th article of the treaty of 1846, concludes, I trust, the negotiations which I have carried on with this Government in obedience to your instructions contained in your Nos. 12 and 23.

The original will be forwarded by the first safe opportunity. For the files of the legation I have obtained a certified copy.

In the course of the negotiation various expedients were proposed by the Colombian secretary of foreign relations for the purpose of avoiding the direct issue in question, and in pursuance of the views indicated by his predecessor in his letter to the Department of State dated July 1, 1878. Among others, he submitted to me the draft for a new convention, explanatory of the existing treaty in reference to the subject in question, but as this draft contained the objectionable feature of allowing the exercise of a discretion to the State government of Panama, in refusing the right of transit to prisoners in the custody of the Government of the United States under certain circumstances, and as also, in my opinion, the multiplying of conventions on a subject clearly within the provision of an existing treaty is a matter of doubtful policy or propriety, I was obliged to decline the proposals made by the Colombian secretary, and instead thereof urged upon him the desirability of arriving at a common accord on the question at issue, by giving a satisfactery construction to article 35 of the

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treaty of 1846. At the same time I was free to admit that while I considered the right of the Government of the United States to the "innocent use" of the right of way or transit as a "perfect right" under the treaty, I was ready to acknowledge the propriety of adopting such reasonable regulations for the exercise of the same as would assure to the Government of the United States a practical enjoyment thereof.

The objections raised on account of the Colombian constitution were met by the arguments set forth in my previous communication to the Colombian Government, a copy of which was inclosed in my No. 17 to the Department, supported by citations from Calvo, Bello, and other Spanish writers on international law, to whose works I also referred for authorities in the construction of the language used in article 35 of the treaty. I also took occasion to suggest that the doctrines maintained by the Government of Colombia in regard to the sheltering and protecting power of articles 10 and 15 of the Colombian constitution might, at some future time, prove highly inconvenient to the Government of this Republic in making it an impossibility to repel an undesirable emigration of criminals who would wish to avail themselves of this country as a place of refuge.

The ever-present danger to the sovereignty of his country, which, to the Colombian statesman, is something to be apprehended in his intercourse with other nations, and which was brought forward on this occasion as a standing objection, was disposed of in the manner indicated in the communication to which reference was made above, in which I set forth clearly that inasmuch as the Government of the United States had guaranteed the sovereignty and property of the Isthmus of Panama to the United States of Colombia by the solemn obligation of a treaty, it was, to say the least, an inconsistent view that any apprehensions should be entertained of, or any precautions need be taken against, the guaranteeing power.

The subject was discussed several times by the President and Cabinet, and when finally the secretary of foreign relations informed me that his Government acknowledged the justice of the position of the Government of the United States, the question arose as to the manner in which this acknowledgment of the Colombian Government should be expressed and how the exercise of the right of transit thus conceded to pertain to the Government of the United States should be regulated.

Instead of a note which the secretary of foreign relations offered to write, I suggested a protocol of a conference embodying an agreement. I beg to refer here to my No. 35 in which I informed the Department of certain researches which I was making, and having made, for the purpose of finding a precedent if possible.

Among the unpublished executive communications of the Colombian Government a letter was discovered, a copy and translation of which I inclose, in answer to an inquiry made by the Government of the State of Panama, which by the use of the words "and prisoners under the Federal jurisdiction" in the second article of the letter was perfectly applicable to the settlement of the subject under consideration. As the language of the second article of this letter is so clear in setting forth the rights of the Government of the United States, and in order to make use of it as a link in the chain of precedents, I suggested that in the protocol to be drawn up and signed, the pertinent parts of this letter be inserted. You will perceive that article 1 of the protocol expresses the

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rights of the Government of the United States in the premises clearly and distinctly, and is a clear statement of the rights and obligations of both Governments.

Article 2 of the protocol relates to the manner in which the right of transit is to be exercised by the Government of the United States in the case of prisoners. A distinction is made between prisoners extradited from other countries and those taken from one part of the United States to another. In the former case the documents upon which the extradition has taken place are to be shown to the agents of the Colombian Government at Panama merely as an act of notification; in the latter case no such formality is necessary.

Concerning article 3 of the protocol, I beg to refer to the correspondence in inclosures Nos. 3 and 4. In addition to the views therein expressed, I am of the opinion that the custody of any prisoner of the United States during the time of transit and embarkation by the Colombian authorities, will save a great deal of trouble and annoyance to any officer in charge of such prisoner.

The accompanying correspondence, contained in inclosures No. 3 and 4, also expresses my views in regard to article 4. As the Colombian secretary requested that the same should be inserted, I expressed a willingness to sign the protocol with the distinct understanding expressed in my letter of February 22, contained in inclosure No. 3.

After the signing of the protocol and the delivery of my note of February 22, 1879 (inclosure No. 3), and before Dr. Arosemena could answer the same as agreed upon, the Colombian Senate deprived him of the power of so doing by refusing to confirm his nomination.

In order that this matter should be closed up by an answer to the note of February 22, I have delayed this dispatch until this answer could be obtained from the successor of Dr. Arosemena. I beg to refer to it as inclosure No. 4.

As soon as the protocol is published in the official newspaper (Diario Oficial), I shall send copies of the same to the consuls of the United States at Aspinwall and Panama.

I trust that the result of my actions will meet with your approval.

I am. &c.,

ERNEST DICHMAN.

PROTOCOL.

[Inclosure No. 1 in No. 58.—Translation.]

At a conference which took place in the department of the interior and foreign relations at Bogota to-day, the 22d of February, 1879, between the secretary thereof, Pablo Arosemena, and the Hon. Ernest Dichman, minister resident of the United States of America at Bogota, being both duly empowered by their respective Governments, with a view of examining the differences which have arisen between them relating to the right of transit which the Government of the United States of America has across the Isthmus of Panama, and for the purpose of arriving at a common accord which will remove said differences definitely, agree upon the following:

1st. As was recognized explicitly by the Government of the United States of Colombia in a note directed by the secretary of the interior and foreign relations to the Government of the State of Panama, on May 15, 1865, under No. 77, according to article 35 of the treaty with the United States of America of the 12th of December, 1846, the Government of Colombia guarantees the right of way or transit across the isthmus, not only to the citizens of the United States, but also to their Government, and, consequently, the troops of the American Union, as well as the prisoners under

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the Federal jurisdiction, can pass as the usual service of its administration, a right which is established in compensation for the guarantee of the sovereignty and property of the isthmus, to which the same Government is bound.

2d. In the case of transportation across the Isthmus of Panama of criminals, the extradition of which may have been obtained by the United States of America from other Governments, there will be presented by the consular agent of that country to those (the agents) of the government of the union in the State of Panama, the documents which may have served as a basis for the extradition. In the case of the transportation of criminals proceeding from the territory of the United States this formality will not be necessary.

3d. The armed forces of the nation or of the State (troops) will take charge gratuitously of the custody of the criminals, the transportation of which is requested by the Government of the United States of America from that of the United States of Colombia (across the Isthmus of Panama).

4th. The honorable senate of plenipotentiaries will be notified of this settlement.

In faith of which, we sign and seal two copies of this protocol at Bogota, the twenty-second of February, one thousand eight hundred and seventy-nine.

[SEAL.] PABLO AROSEMENA.

The minister resident of the United States of America:

[SEAL.] ERNEST DICHMAN.

[Inclosure 2 in No. 58.—Translation.]

UNITED STATES OF COLOMBIA, NATIONAL EXECUTIVE POWER.

DEPARTMENT OF THE INTERIOR AND FOREIGN RELATIONS.—BUREAU OF FOREIGN AFFAIRS.

Section 1, No. 77.

To the Secretary of the Government of the Sovereign State of Panama:

The citizen President of the Union, to whom was referred your note of the 13th of January last, No. 43, has ordered me to transmit to you the following instructions, according to which the Government will regulate its conduct concerning the transit of foreign troops across the isthmus, leaving inoperative those which may have been given formerly upon the same matter:

1. The transit across the isthmus, as a general rule, is prohibited to all nations, unless permission be obtained previously from Congress, in view of section 4 of article 49 of the constitution.

2. According to article 35 of the treaty with the United States of America of the 12th of December, 1846, the Government of Colombia guarantees the right of way or transit across the isthmus not only to the citizens of the United States, but also to their Government, and consequently the North American troops, as well the prisoners under the Federal jurisdiction, can pass as the usual service of its administration, a right which is established in compensation for the guarantee of the sovereignty and property of the isthmus, to which that same Government is bound towards ours.

3. When there may be a necessity of changing the crews of foreign men of war the executive power of the State shall warn them not to commit any hostile act, and to require an account of the sailors who are being exchanged or replaced, who will not be permitted to take the train of the railroad, except as ordinary passengers, and free from any foreign military authority; that is to say, they must not be in military order.

4. The same will be observed when soldiers or sailors, being sick and coming from foreign men-of-war, wish to cross the isthmus for the purpose of going to other places to be cured.

I say this to you in answer to your note herein referred to, and in order that you may be pleased to communicate the same to the citizen-president of the State with a view of securing the due compliance therewith.

ANTONIO DEL REAL.

BOGOTA, *May 15, 1865.*

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[Inclosure 3 in No. 58.]

Mr. Dichman to Mr. Arosemena.

LEGATION OF THE UNITED STATES,
Bogota, February 22, 1879.

SIR: Referring to the protocol of a conference embodying an understanding on the subject of the right of transit across the Isthmus of Panama, guaranteed to the Government of the United States by the thirty-fifth article of the treaty of 1846, which I had the honor to execute with you to-day, I deem it right to observe, for a fuller and better understanding of the same, that I offered in behalf of the Government of the United States to provide for a reimbursement of any expenses to which the Government of the United States of Colombia might be subjected in executing article 3 of the protocol.

To which you replied as follows:

"Speaking for the Government of Colombia, and also for the Colombian people, as an evidence of our traditional friendship for the United States of America, to show a liberal spirit in complying with treaty stipulations and to promote the ends of justice and morality, the Colombian Government reaffirms not only the right of way or transit guaranteed by treaty to the Government of the United States, but also offers the services of its national and the State forces at Panama, in order to enable the Government of the United States to make an efficacious use of this right of way or transit in the exercise of one of its administrative functions, concerning in this particular instance the transit of prisoners under its jurisdiction, and I deem it improbable that in the services to be rendered under article 3 of the protocol any expenses will be incurred by the Colombian Government.

"The maintenance of any prisoners who may be unavoidably detained on the Isthmus of Panama may be provided for by the Government of the United States of America."

With this understanding the word "gratuitously" was inserted in article 3 of the protocol. I also took occasion to state, before signing the protocol, that the notification or account to be given to the Colombian Senate by article 4, which was added at your instance, was not to be construed as an admission on the part of the Government of the United States that the exercise of the rights guaranteed by the treaty of 1846, and the execution of the understanding embodied in the protocol, should depend upon the action of the Senate of Colombia, to which you replied that the purposes of article 4 of the protocol were only to be considered as pertaining to the relations between the executive power of the United States of Colombia and the Colombian Senate, and, being thus purely internal, article 4 was not to be construed as imposing any limitation or restriction upon the rights acquired by the United States by the treaty of 1846, or upon the execution of the understanding embodied in the protocol which was executed for the purpose of defining and regulating the manner in which one of these rights may be exercised.

I will thank you to notify me of the correctness of these statements, in order that a duplicate of this note may accompany the protocol herein referred to. I have addressed this note to you in duplicate in order that you may be able to return one copy with your remarks thereon.

In bringing the correspondence on this subject to a close, permit me to express my appreciation of the courtesy and patience which you have always manifested during the entire course of what has at times been a difficult and delicate negotiation, and to subscribe myself, with sentiments of the highest consideration,

Yours, &c.,

ERNEST DICHMAN.

[Inclosure 4 in No. 58.]

Mr. Ancizar to Mr. Dichman.

UNITED STATES OF COLOMBIA,
DEPARTMENT OF THE INTERIOR AND FOREIGN RELATIONS,
Bogota, March 15, 1879.

Upon studying the note of your honor dated February 22 last, and the protocol to which it (the note) refers, I was obliged to consult with my distinguished predecessor, the Señor Dr. Pablo Arosemena, upon the points of which that note treats, and he has informed me that they are correct in every part.

I have the honor thus to manifest the same in answer to the honorable minister resident of the United States of America, and to subscribe myself his honor's most obedient servant,

M. ANCIZAR.

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Mr. Dichman to Mr. Evarts.

No. 112.] LEGATION OF THE UNITED STATES,
Bogotá, July 19, 1879. (Received August 23.)

SIR: The information received from Paris relating to the so-called International Scientific Congress which has been in session in that city, discussing the merits of the different routes for an interoceanic canal, and which appears to have decided in favor of the Panama-Limon route, has been the cause of much self-congratulation at this capital, and the words of Mr. De Lesseps, which may, perhaps, have been incorrectly reported, or only due to momentary enthusiasm, to the effect that he was assured of capital to the extent of one hundred millions of dollars to secure the execution of the great undertaking, have, in the opinion of the Colombian statesmen, brought the great expectations which they have cherished so long and so ardently almost to a point of fruition.

It has been my intention for some time to submit my views on the subject of an interoceanic canal for your consideration as soon as a fitting opportunity should present itself, this being one of the subjects to which I have reference in my No. 90, of May 19, 1879.

The present occasion makes it opportune to do so, confining myself to the political and economical aspect of the subject as far as this country is concerned; the technical and scientific questions connected therewith must, of course, be left to the opinion of those gentlemen who have made a special study thereof.

It would also be a work of supererogation on my part and foreign to my purpose, as well as an undue demand upon your attention, if I should enter upon any statements which have reference to the importance of this great enterprise; for the project of uniting the Atlantic and Pacific oceans by means of a canal has enlisted the attention and support of the most eminent men of the world from a period but little subsequent to the discovery of this continent, and it would therefore be impossible to express any opinion which has not, at some time or other, been made public.

The Republic of the United States of Colombia, having within her territory the choice of several routes for an interoceanic canal, many treaties and contracts have been made with this Government for the purpose of undertaking this vast enterprise. An examination thereof seems to show they have been enacted by the Colombian Government in rather a narrow and selfish spirit, containing stipulations which would prevent a canal from attaining that degree of usefulness which the world would naturally expect from a work fraught with such vast consequences to the well-being of mankind. The action of the Colombian Government in this matter shows a marked deviation from the liberal spirit displayed by the founders of this Republic, as evidenced by the correspondence of Bolivar.

The Wyse contract (a copy and translation of which I forwarded from Aspinwall under date of August 14, 1878), being the last of these engagements with the Colombian Government for the construction of an interoceanic canal is well deserving the careful examination of the Department, for if it affords an assurance that under its provisions satisfactory results can be obtained, it would merit the support of the United States, but if upon examination the contract should not prove to be of such a nature as to assure to a canal the highest degree of use-

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fulness, then it ought not to be permitted to be an impediment to a negotiation of a more satisfactory character.

It will readily be conceded that the nearer an interoceanic canal approaches to the character of a strait in freedom from obstructions of all kinds, both natural and artificial, the more it will be suited to the wants of commerce and be useful for all time.

As far as the natural obstructions are concerned, that is a question for engineering skill and scientific knowledge.

The artificial obstructions are created by the conditions of the contract under which the canal is to be constructed. They are principally questions of a political and economic character, relating to the security of the enterprise and the amount of participation in its revenue required by the government in compensation for the privilege which has been granted. The consideration of these questions would naturally be of great influence in determining the conditions under which the necessary amount of capital for the execution of the enterprise can be obtained, and as a corollary the charges for the use of the canal would be low or high, or the usefulness of the canal would be greater or less, according to the more or less favorable conditions of the contract under which it may be constructed, judged by any of these considerations. I am of the decided opinion that the Wyse contract is defective, and is not deserving of any encouragement; and while it would be difficult to indicate any step which might or ought to be taken to prevent any individual or society from risking his or their money in its execution, I am sure that eventually its provisions will be found inadequate to allow a completion of so noble an enterprise.

Without going into an examination of all the details of the contract, such as the limit in time for the construction of the work, its political and neutrality articles, the rights reserved to the Colombian Government of the inspection of the accounts, the free passage of Colombian troops and ships, the participation in the gross income of the canal, the burden of having to maintain such troops, without limit as to number, which the government may deem necessary to insure its security, the absolute ownership of the entire property by Colombia in ninety-nine years, the various reasons for which a forfeiture of the entire property may be decreed by the supreme court of Colombia; it is a sufficient and insuperable objection to the contract as a whole that it is a mere undertaking between a private company and a government, which, whatever our wishes and hopes in that regard might be, does not possess that degree of stability and power to make its guarantees effective, and the history of which is not calculated to inspire confidence as far as the investment of large amounts of capital under its protection is concerned.

The question of the security of this enterprise has to be considered from the internal or domestic, and from the external or foreign standpoint. The conditions of peace and war, not only with and in Colombia, but throughout the world, enter into its consideration.

Without attaching an undue importance to the ever-present danger from local, State, and national revolutions, they are a fact, the danger from which can not be overlooked and must be taken into consideration. The history of the diplomatic relations between the United States and Colombia (New Grenada) relating to the present interoceanic route by means of the Panama Railroad, shows a series of difficulties which have taken place from time to time, such as the Panama riots, questions as

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to mail transportation, attempted exaction of tonnage dues, and attempts at exorbitant and war taxation, all of which constitute elements of insecurity, and which should be provided against in a careful manner and by means of a treaty with a powerful American Government.

In making these statements I do not wish to be understood as assuming or even intimating intentional bad faith on the part of the Government of this Republic, for quite the contrary is true. But circumstances are stronger than the Government; the vicious habit of resorting to arms for the settlement of political differences has become chronic, if not constitutional, and in determining the basis upon which a work is to be inaugurated in which the whole world has a deep interest, care should be taken to remove it from the sphere of local politics, or from the influence of popular commotion.

In the consideration of the question of security from the foreign standpoint and the conditions of peace and war, it does not require any argument to show that a mere contract between Colombia and a private company does not afford that assurance of undisturbed use and enjoyment of the canal which the commerce of the world has a right to expect. It is attempted to establish certain principles in article 6 of the contract, a translation of which article reads as follows:

ART. 6. The United States of Colombia reserve to themselves the right of passage through the canal for their vessels, troops, and munitions of war at all times without paying any tolls whatever. The passage through the canal remains rigorously closed to the vessels of war of the nations which may be at war with each other, and which by public treaties negotiated with the Colombian Government may not have acquired the right of transit through the canal at all times.

It is merely necessary to read the aforegoing article once in order to notice its objectionable and impracticable features. Will a powerful belligerent nation allow the canal to be closed against its ships when it is open to the ships of the enemy? What nation will make the special treaty required?

As yet but one nation, the United States, has guaranteed to Colombia the sovereignty and neutrality as well as right of property in the Isthmus, nor is it likely that any other of the great maritime powers will do so.

Is the isthmus canal, preeminently a work of peace, to be made the theater of war? How will Colombia cause her will and sovereignty to be respected in time of war?

It would be an easy matter to continue these reflections, any one of which shows the objectionable character of the article of the contract above quoted. The Government of the United States cannot view with indifference the effort made therein to establish a principle of distinction in, or exclusion from, the use of the canal.

It may also be argued, and with much propriety, that a work of such magnitude and involving consequences of such importance should not be made a matter of speculation, but should possess such government guarantees as will insure its security at all times, define its use clearly, whether in peace or in war, and which would enable the capital necessary for its construction to be obtained at the lowest possible rate of interest. In the various documents which have come under my notice having relation to the present scheme for a canal, the disinterestedness and enthusiasm of its authors or promotors are given great prominence. A reference to article 20 of the contract will show that there is much method in that enthusiasm. "The company remains authorized to

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reserve ten per cent of the stock which it may issue to credit a beneficiary stock fund in favor of the founders and promotors of the enterprise," &c. If in a paper of this nature the reference were admissible, I might say that in reading this part of article 20 just quoted, the language of Colonel Sellers would not be inapplicable: "Hurrah for the old flag and a little appropriation." Who are the founders of the enterprise? In the explorations for an interoceanic canal route, the greatest talents and the ablest skill have been engaged for over half a century. Governments and individuals have vied with each other in furnishing the means to make these explorations, and able men have sacrificed their health and even their lives in the enthusiastic pursuit of trying to find a solution to this problem of nature. The literature which has been written on this subject alone would make a fair-sized library. By what title do the promoters of the present scheme claim to be the heirs to all of these efforts? It does not seem to be in accordance with a sense of right, that all the sacrifices which have been made, all the hardships which have been endured, should only redound to the profit of the founders and promotors of the enterprise. No, it was founded when Columbus set sail from Palos, and has been promoted by a long list of names, including that of Strain and his ill-fated companions.

The world will have to pay for its construction by means of tolls on its commerce. Why, then, allow these tolls to be increased by paying again for that in which the world already has a vested interest? The proposition does not require any demonstration that the cheaper the canal can be constructed the lower will be the tolls and the greater its usefulness.

In the light of the aforegoing statements, a gratuity or beneficial stock fund of its entire capital to the founders and promoters of the present scheme would certainly be a heavy tax on the commerce which is to make use of the canal. It would certainly be surprising if, upon a careful study of this contract, a sufficient amount of capital could be secured to carry this great work on successfully. A company may be organized, and subscriptions made to its stock, but it is very much to be apprehended that its existence will only prove an obstacle to the ultimate realization of this great enterprise upon a sounder and more judicious basis.

In the case of an undertaking of such magnitude as the construction of an interoceanic canal in which the whole world is interested, and in which the interest of the government of the territory through which such canal may be located is a mere matter of deriving pecuniary advantages from, or compensation for, the right of way, it is a part of wise statesmanship to weigh not only the probable, but also the possible. effects of any steps which are to lead to its realization, and which may not only be for a temporary purpose, but which may affect important interests for all time.

In my opinion, considerations of reason and expediency concur in indicating the policy that any arrangement between the Colombian Government and a private company should be discouraged.

In speaking of expediency, I do not desire the word to be understood in a narrow or unworthy sense, but as relating to the practical effects of any policy prescribing the political and economic conditions under which this great work should be undertaken in order to make it productive of the greatest possible benefit to humanity and civilization.

Nor is the policy of indifference or nonintervention on the part of the

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Government of the United States to be recommended in any proceedings which have for their object the regulation of the conditions under which an interoceanic canal is to be constructed, for such a policy of inaction might be construed into a tacit consent to the inception of abuses, which, however slight at first, would grow with time and become burdensome in proportion. The history of the "Sound dues," their origin, continuation for centuries, and the efforts and capital necessary for their abolition may be studied with advantage in this connection.

It appears that considerations of national and individual jealousy have been important factors in some of the previous negotiations of treaties and contracts with the Colombian Government for the right to construct an interoceanic canal. (See legation Nos. 115, February 22, 1869; 116, March 1, 1869; 12, March 16, 1870; 19, April 17, 1870, etc.)

In the treatment of the subject of this dispatch, which I fear has assumed an undue length, I have been influenced by the consideration that among the nations interested in the construction of an interoceanic canal the United States occupy the first rank. With a territory washed by both oceans, a waterway by means of such a canal between the Atlantic and Pacific States in preeminently to be desired, both on account of commercial as well as political reasons. It is therefore proper that the United States should not only be called upon to contribute materially to the successful execution of the enterprise, but also that the voice of their Government should be potent in defining the conditions under which the same shall be undertaken and used.

I am, &c.,

ERNEST DICHMAN.

Mr. Dichman to Mr. Evarts.

No. 118.] LEGATION OF THE UNITED STATES,
Bogota, August 1, 1879.

SIR: In my No. 112 of July 19, 1879, I took occasion to bring to your notice my views on the subject of an interoceanic canal across the territory of this Republic, relating particularly to the Wyse contract and the defective nature of that instrument.

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I now beg to reiterate and respectfully submit to your judgment, that not only ought this mode of undertaking the construction of an interoceanic canal be not encouraged, but it ought to be discouraged by all proper means. The unsatisfactory character of the conditions contained in that instrument for attaining the objects for which it was executed, and its speculative features, as well as my reasons for arriving at the unfavorable opinion formed in regard to the same, are fully set forth in the dispatch to which reference is made above. Nor would the instrument be made acceptable by any amendments or modifications which could be introduced. The insuperable objection mentioned in my No. 112, that it was a mere contract or understanding between the Colombian Government and a private company, would always remain.

In addition to the reasons set forth in my No. 112 to sustain this opinion, it is only necessary to refer to chapter 2, section 2, article 5, of the constitution of the United States of Colombia, which article treats of the guarantees of the rights of property, and provides that private

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property shall not be taken for public use without judicial condemnation and previous indemnification. A copy and translation of the constitution of Colombia were forwarded to the Department with my No. 70, of April 17, 1879.

The language of the first part of article 5 might be well enough if it were not for the second part of the same article, which provides that in time of war the indemnification need not be previous, and that the necessity for the expropriation may be declared by other than judicial authorities (which means any military officer, from a general down to the commander of a squad), and thereby involves the tenure of property in an uncertainty of doubts rendered all the more aggravating by the fact that by article 91 of the same constitution civil war is recognized as one of the institutions of the country, and that unfortunately the normal state of this Republic is one of civil war, or, in its absence, one of armed peace.

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Of course it does not need any argument to demonstrate that any contract entered into between the Colombian Government and a private company is subject to all the limitations and provisions of the Colombian constitution; and while the same may also be said to be true in the case of a treaty, there is this great difference, that in the case of a treaty, and particularly one with a government which has the power to make itself respected, no difficulties as to rights of property guaranteed by the treaty need be apprehended.

In treating of this subject I have so far confined myself, both in this dispatch as well as in my No. 112, in setting forth the reasons which in my opinion make the present contract for the construction of a canal unacceptable to the United States and to the commerce of the world. I shall now make a further demand upon your attention, in presenting some views as to the policy which, in my judgment, would be productive of the most satisfactory results in determining upon the legal and political conditions under which this great enterprise is to be executed and used.

I beg to premise, in this connection, that perhaps the time has come when this dream of generations, the construction of a water way between the Atlantic and Pacific oceans is to be realized, and that it may possibly, if not probably, be constructed within the territory of this Republic, for the sentiment of the world appears to be in favor of a tide-level canal, without locks, even at an increased original cost for construction.

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As I have already explained, the political condition of this Republic is not of such a nature as to attract the investment of many millions of dollars in such an enterprise. * * * Even the existence of the Government and the union of these States is anything but assured, and the ever-present danger of the secession of the State of Panama makes it exceedingly improbable that anybody can be found to invest his money in an undertaking which, without the support and guarantee of the United States, might probably be made a bone of contention between the different political factions of this country. Nor is it to be supposed that any European government would give its moral or material support to an enterprise of such magnitude on this continent without first coming to an understanding with the Government of the United States.

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I would also respectfully suggest that the question of the neutrality of the canal, and a zone covering its approaches, might probably be made the subject of an understanding between the great maritime powers.

While it is with great hesitancy and diffidence that, on the point of the neutrality of the canal, I would submit a modification of the views entertained by so eminent a statesman as the late Hon. William H. Seward, as expressed in his No. 58, of September 27, 1868 (explanation of Article IX), I should not deem it consistent with propriety to advance my views unless requested to do so by the Department.

The question of the neutrality of the canal is the only one about which a possible difference might exist between the United States and the other great maritime powers. After this shall have been satisfactorily adjusted it would be easy to come to an understanding on the subject of additional surveys for a route for a canal, the manner in which a route is to be finally determined upon, and the support and guarantees which the different governments would be willing to give to the enterprise.

If an understanding between the great maritime powers can be arrived at on this subject it would also have the effect of eliminating from any future negotiations with Colombia in regard to the right of way the jealousies which have marred previous efforts in that direction. (See No. 115, of February 22, 1879; 116, of March 1, 1869; 12, of March 16, 1870; and 19, of April 17, 1870, &c., from this legation.)

All the previous negotiations with the Colombian Government for the privilege to construct a canal have turned principally upon the amount of equivalent required for the right of way. The extravagant views entertained here of the value thereof, the idea of a participation in the income and management of the canal, and the absolute ownership of the entire work by Colombia in ninety-nine years after its completion are features which appear in all treaties and contracts which have been made so far, and which ought not to be entertained in any new negotiations. The rights of Colombia should be paid for by a fixed sum of money, excluding the idea of any future or contingent interest; and if the amount of this sum of money can not be determined by means of a direct agreement it will, no doubt, be possible to devise some way whereby the same may be established by means of arbitration. In this connection it is well to bear in mind that on some of the proposed canal routes within Colombian territory the Indian title to the land has not yet been extinguished, and that the exercise of the sovereignty of the Government of this Republic is perhaps more nominal than real.

Precedents for an international understanding concerning improvements of channels of commerce or communication in which more than one nation is interested are not wanting. I beg to mention only the abolition of the Sound and the Scheldt dues, the Mont Cenis and St. Gothard tunnels, the improvement of the navigation of the Lower Danube, and the erection and management of the light-house at Cape Spartel.

It is more than probable that, after the construction of an interoceanic canal, the commerce from which the tolls will have to be collected will belong principally to the United States and Great Britain. Therefore the questions as to the cost and management of this enterprise are of great importance to the United States. The guarantee for its security against domestic and foreign dangers will ultimately have to be assumed

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as a heavy responsibility by the United States Government, and it is only right that, in determining the conditions under which this work is to be undertaken, the Government of the United States should be consulted, and should have that control over its management and use which is demanded by the commercial and political interests of our country, the proximity of the canal to our ports, and its position on the American continent.

I am, &c., ERNEST DICHMAN.

Mr. Dichman to Mr. Evarts.

No. 151.] LEGATION OF THE UNITED STATES,
Bogota, October 17, 1879.

SIR: In continuation of my previous dispatches on the subject of an interoceanic canal, and in compliance with the instructions contained in your No. 57, of July 9, 1879, I beg to inclose a copy and translation of the grant for the construction of such a canal from the Colombian Government to a French company. The grant or contract is known here as the "Wyse contract," and I shall refer to it by that name in this dispatch. The translation thereof which accompanies this dispatch having been made with great care, I would respectfully request that it be substituted for the translation which was forwarded with my unnumbered dispatch from Aspinwall under date of August 14, 1878, and reported in my No. 4, of October 8, 1878, from this legation. I also beg to state that there exists no treaty or convention between the Government of the United States of Colombia and any other government relating to the subject of an interoceanic canal.

Before proceeding to give an account of the history of the Wyse contract it may not be uninteresting to note, as briefly as possible, the successive steps taken by the different governments of this country with a view of inducing foreign capital, skill, and labor to open a communication between the Atlantic and Pacific oceans. The following statement is taken from the archives and records of the Colombian Government, which I have searched from the independence of the country down to the present time, and embraces, I believe, an enumeration of all the grants, contracts, and treaties relating to the opening of interoceanic communication across Colombian territory which have been executed. A few general observations are applicable to all these legislative contributions of Colombia toward the realization of a canal between the Atlantic and Pacific oceans. Exceedingly great care appears to have been taken in the execution of all of these instruments to secure as large a share as possible of the gross income of any road or canal which might possibly be constructed; and notwithstanding the many noble sentiments with which they abound, testifying to the readiness of this country to contribute its share towards advancing such a work, fraught with incalculable advantages to the commerce and civilization of the world, they all seem to have been based upon the principle of benefiting the national treasury by exacting as large an equivalent as could be obtained for the concession of the right of way.

The first mention of anything relating to the construction of an interoceanic canal across the Isthmus of Panama which I can find in an official document of this Government occurs in a letter from Mr. F. A.

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Zea, under date of September 6, 1820. At that time Mr. Zea was the minister of Colombia at London, seeking the recognition of the independence of his country from the British Government. In the letter just mentioned he informs the President—Bolivar—that he has subscriptions from many of the first commercial houses of Europe for a loan of $60,000,000 for the purpose of constructing a canal between the two oceans. But as no canal was constructed, it is reasonable to suppose that the subscriptions to the loan were reconsidered.

The independence of the former Republic of Colombia had hardly been established before President Bolivar addressed a message to the Colombian Congress, in 1823, recommending that steps be taken to provide for the construction of a canal or road across the Isthmus of Darien or Panama. The next mention of the matter occurs in connection with the Panama congress (see instructions of the Hon. Henry Clay to Mr. Anderson and Mr. Sergeant, the representatives of the United States to that body. The instructions are not on file at this legation).

In 1828 and 1829 President Bolivar directed that explorations of the isthmus should be made, but the political troubles of the country and its subsequent division in 1831 into the three Republics of New Granada, Ecuador, and Venezuela frustrated his intentions in that direction.

Upon the dissolution of the former Republic of Colombia the sovereignty of the territory in which a canal could be constructed remained with New Granada, the Government of which made a contract in 1834 with the French Baron Charles de Thierry for the opening of a canal on the line of the Rio Grande, Chagres, and Bay Limon. Nothing was done under this contract; and on the 22d of June, 1836, a new concession was made to Mr. Charles Biddle and associates. Pursuant to a resolution of the United States Senate, in 1835, offered by the Hon. Henry Clay, Mr. Biddle had been appointed by President Andrew Jackson a commissioner of the United States to examine the different routes best adapted to interoceanic communication. Mr. Biddle was also instructed to obtain information at Bogota concerning the Thierry contract of May 22, 1834. His visit to Bogota resulted in the contract made in 1836 above mentioned, which shared the fate of its predecessor, and remained without tangible results of any kind. (See Department's dispatches, No. 24, of May 1, 1835; No. 33, of September 23, 1836, and No. 35, of February 18, 1837.)

On the 1st of June, 1842, the Congress of New Granada passed a law offering the concession for the construction of a canal or railroad and inviting proposals for the same. This led in 1847 to a contract made with a French company, comprising among others prominent officials of the French Government, and, upon their failure to carry out the concession, to the contract made with Mr. John Lloyd Stephens, in 1850, under which the Panama Railroad has been constructed. This was the first of the many grants or contracts which was faithfully executed, and from which New Granada and the United States of Colombia have derived, and are deriving, large revenues.

On the 7th of June, 1850, three days after the signing of the Panama Railroad contract, a law was passed authorizing the Executive of New Granada to permit the transit of closed mails of friendly governments over that road, instructing the Executive by the same law to prescribe

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rules under which the transit of such mails is to be permitted and to "*exact the greatest possible advantages in favor of the Republic.*" * * *

In 1851 two concessions for canals were granted, one on the Atrato-Napipi route, and the other on the line of the Atrato and San Juan. And, lest two canals might not suffice, a third grant was executed in the following year (1851) for a canal to be located between the Gulf of San Miguel and Caledonia Bay.

In 1854 the Government of New Granada, stimulated into activity by the explorations made by the lamented Strain and others, decided to make explorations on its own account, but no work was ever done under this laudable resolution beyond the printing of the law authorizing and directing that such explorations should be undertaken.

It was perhaps feared here in 1855 that some possible canal route had been overlooked in the three grants made in 1851 and 1852; and, in order to supply such a defect, a contract for a fourth canal was executed in 1855, to be located anywhere between the 4th and 8th degrees of latitude.

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With peace in the Republic came a new canal project in January. 1866, but not appearing to meet the views of the Colombian Congress, it failed to meet with the approval of that body.

On the 27th of June of the same year (1866) Congress enacted a law laying down certain bases for the construction of a canal, and prescribing conditions upon which a concession would be granted. By the same law the Executive was requested to make all due exertions with a view of promoting the execution of another canal contract either within the country or abroad. The desire of the Colombian Government to enter into a new contract for the construction of a canal was advertised in Europe; and in 1867 a French company offered to construct a canal with only two locks, but the proposal not being in conformity with the law of 1866, referred to above, it could not be accepted. Proposals were also made about the same time by several associations formed in England. One of the associations counted among others the name of Count Gleichen, which appears to have attracted considerable attention on account of the support given to him by Lord Clarendon. But their proposals, also, did not reach any satisfactory result. So far no government had made any proposals; but in the spring of 1869 the Peruvian minister at this capital offered, in the name of and under instructions from his Government, to contribute a large sum of money towards the construction of an interoceanic canal, on the ground that the Governments of the American continent should be directly and largely interested in such an undertaking.

The treaties negotiated in 1869 and 1870 between the plenipotentiaries of the United States and of Colombia, and the objectionable changes in them proposed by the Colombian Congress, are too well known at the Department to need any further explanation.

No contracts were executed between the years 1870 and 1876, owing probably to the absence of contractors; for the records of the Colombian Congress show that the matter received a due share of attention in the discussions of that body. (See, also, No. 74, of November, 1874, from this legation, and Department's No. 60, of December 15, 1874.)

The aforegoing brings the history of the efforts made by the successive Governments of this country to enlist foreign enterprise in the construction of an interoceanic canal across Colombian territory down to the inception of the Wyse contract.

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It might have been supposed that this record of a series of failures to accomplish the desired object would have taught the public men of this country that a work of such magnitude, and involving considerations of a political and commercial nature of the greatest importance, could not be realized by the mere granting of a concession or the execution of a contract, and that the indiscriminate manner in which such concessions had been sought and granted could only prejudice, if not the ultimate construction of the canal, at least any efforts which might be made in good faith with this Government to negotiate in relation to the matter upon such a basis as would inspire confidence and assure the support of the large amount of capital required.

But such was not the view of the subject which was entertained here; and when, in the spring of 1876, a Mr. A. de Gorgoza arrived at Bogota for the purpose of obtaining a new canal contract, he readily procured the passage of a law, known as law 33 of 1876, authorizing the Executive to negotiate for the opening of a canal between the Atlantic and Pacific oceans.

On the 28th day of May of the same year (1876), being two days after the passage of this law, a contract for the opening of a canal was executed between the Colombian Government and A. de Gorgoza, the latter signing the contract for himself and for General Stephen Türr, of France. For a copy of this law and contract I beg to refer you to the inclosures, with the contemporaneous dispatches Nos. 163, of May 7, 1876, and 170, of June 5, 1876, from this legation.

It appears that this contract was transferred to a French company, known as the "Civil International Society of the Interoceanic Canal." For the sake of brevity this society will be mentioned hereafter as the "Türr Society." It is reasonable to suppose that A. de Gorgoza was sent here as its agent in the procuring of the canal contract, and that his signature to the contract in his individual name, and that of General Türr, was undoubtedly made in that manner for the purpose of avoiding much prominence being attracted to the scheme in which he was engaged. For it does not seem from all that I can learn that in the passage of the law of 1876, and the subsequent execution of the contract with A. de Gorgoza, any expectation was entertained here at the time that the contract would ever amount to anything serious. The statesmen of Colombia were otherwise occupied then, in making provisions for the conduct of a war which surpassed in magnitude any of the previous civil wars of this Republic, and which taxed its resources to the utmost. The law was passed and the contract made after the usual stereotyped formula, with the expectation that in a few years at the most they would both drop out of sight, as had done their many predecessors.

Under the auspices of the "Türr Society" Lieut. N. B. Wyse, of the French Navy, one of its members, spent about five months, from December, 1876, to April, 1877, on the Isthmus of Panama in the examination of various canal routes. In February, 1878, he presented himself at Bogota for the purpose of obtaining some modifications of the canal contract then held by the "Türr Society." The result of his efforts was a new contract, in the name of the "Türr Society," a copy of which, with translation, are inclosed.

The next step in the programme was the convocation of the so-called "International Scientific Congress," in May, 1879, with the result of which you are familiar. As belonging to the history of this congress.

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the proceedings of the so-called "Geographical Congresses," which met at Paris in 1875 and 1878, perhaps merit a passing remark. In view of the especial importance given at these reunions to the project of an inter-ocean canal, and the prominent part taken in the discussion of this subject by the promoters of the present scheme, the suspicion is perhaps not wanting in reason that the meetings of the geographical congresses were only the preliminary machinery placed in operation for the purpose of attracting greater public attention to the "International Scientific Congress," and to give an air of impartiality and scientific merit to its decision, which might otherwise appear to have been the result of a previous arrangement.

After the dissolution of the "Scientific Congress" the promoter of the present scheme lost comparatively little time before attempting to convert the indorsement given to it by their congress into a tangible pecuniary result. Accordingly, in pursuance of this object, the "Türr Society" transferred, by an instrument dated July 11, 1879, all the rights which it had acquired under the contract with the Colombian Government to Mr. de Lesseps, to be transferred by him to a canal company to be organized in such manner as he should see fit. The considerations for the transfer to Mr. de Lesseps were to be 1,000,000 francs to be paid fifteen days after the organization of the canal company, 4,000,000 francs to be paid one month after one-half of the stock subscriptions shall have been paid, and 5,000,000 francs in the fully paid-up stock of the company, in all amounting to the sum of 10,000,000 francs.

The disappointment experienced by some of the Colombian statesmen, when the news of the transfer reached Bogota, at not having made a provision in the Wyse contract that at least one-half of the consideration to be paid upon the transfer of the contract to another company should belong to the Colombian Government, may be readily imagined. But these gentlemen evidently overlooked the important fact that the payment of the 10,000,000 francs as well as the construction of the canal itself would depend entirely upon the very improbable contingency that a considerable amount of the subscriptions for the stock of the canal company would be received by Mr. de Lesseps in answer to his invitation.

In a previous dispatch on this subject, No. 112, I have already made mention of the state of feeling in this country on account of the flattering prospect of the construction of the canal through the territory of Colombia. Mail after mail brought the most glowing account from Europe of the assured success of Mr. de Lesseps, extracts from his speeches were published, and when it was officially announced by the Colombian minister at London that the caution money of seven hundred and fifty thousand francs had been deposited, and that on the first of next January Mr. de Lesseps would visit the Isthmus of Panama for the purpose of inaugurating the beginning of the construction of the canal in person, the climax of enthusiasm was reached, and on the 8th of September, 1879, a decree was published by the President of Colombia, providing for a brilliant official reception of the illustrious visitor upon his arrival at Aspinwall. * * *

I have also taken occasion in my previous dispatches on the subject to bring to your notice the reasons why, in my opinion, the construction of a canal under the contract now held by Mr. de Lesseps should be discouraged by the United States. In addition to these reasons, permit me to state that the organization of the company to be formed by

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Mr. de Lesseps, although advertised as international, will be French in everything that affects any question except the contribution of money, for the company must have a domicile somewhere, and must be subject to the jurisdiction of some government. A canal constructed by such a company will be nothing less than the planting of a French colony on the Isthmus. To show the local influence which an enterprise of such magnitude is able to exert, it is only necessary to examine the history of the Panama Railroad. It is owing to the construction of that road that the English language has become common at Aspinwall and Panama, and if it were not for the fact that every management of that corporation attends solely to its legitimate business without interfering in local politics, and that the protection afforded to the road by the Government of the United States is confined to the narrow limits of preventing any interference with its operations arising from the frequent local political disturbance, the population of the State of Panama would have long ago looked for a political connection with the United States. If the construction of a canal under the present contract should be proceeded with serious differences must necessarily arise between the company and the Colombian Government, and notwithstanding the provision as to the submission of such differences to the Supreme Court of the United States of Colombia, supposing the decision of that tribunal to be unjust or only against the company, does anybody at all familiar with the course of the relations of European governments with this and the other Spanish-American Republics suppose for one moment that the intervention of the government of the company would not be invoked, and that it would not be freely exercised? Nor is it an answer to this statement that the contract provides against such intervention. Reasons could easily be found why it should take place, and, as against the pressure of a foreign government Colombia is powerless and helpless at the Isthmus of Panama; it is more than probable that the good offices of the Government of the United States would have to be invoked by the Government of Colombia, and we should thus be in a fair way of having an Egyptian question on this continent, while every consideration of reason and policy would dictate that it should be avoided by making the construction of a canal under the present contract impossible.

The foregoing observations apply perhaps with equal force to any attempt at constructing the canal by a company organized under the jurisdiction of a European Government. Notwithstanding the great advance in the civilization of the world made in this century, the time has not yet come when, in the consideration of great undertakings like an interoceanic canal, the future can be regarded without taking into account the jealousies and frictions between nations which have always existed and probably always will exist. Industry is being organized nationally throughout the entire world, tariffs are being established, and treaties are being concluded for the purpose of securing to one or the other nation an advantage over its competitors, and irrespective of the merits of the political questions involved, the proposition does not need much argument that the commerce of the United States would be at a disadvantage if the management of an interoceanic canal should be in the hands of a European company. This principle appears to have been recognized in England in connection with the Suez Canal, and the purchase of the shares of the Khedive of Egypt by the British Government was an act of policy for the purpose of securing a voice in the management of that canal.

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In the consideration of this subject another question ought not to be lost sight of by the Government of the United States, and that relates to the differences which will undoubtedly arise between the canal company and the shipping using the canal. As it is probable that the larger part of the shipping which will avail itself of the canal will belong to the United States, it is a matter of the greatest importance that no doubt should prevail as to the courts which are to take cognizance of such differences. Is the American shipper, owner, or master to apply to the courts at Bogotá for a remedy, or is he to go to Europe to seek redress from the courts of the country where the company has its legal domicile? In either case the difficulties arising from distances alone would work a practical denial of justice. Can the Government of the United States permit their shipping to be placed at this disadvantage?

The more this subject of the construction of an interoceanic canal is examined the more it becomes apparent that the Government of the United States can not view with indifference the construction and management thereof by a European Government, or by a company subject to the jurisdiction of such Government.

I am, sir, your obedient servant,

ERNEST DICHMAN.

Mr. Dichman to Mr. Evarts.

No. 156.] LEGATION OF THE UNITED STATES,
Bogotá, November 9, 1879.

SIR: For the purpose of bringing article 3 of the protocol, relating to the right of transport claimed by the Government of the United States across the Isthmus of Panama (a copy of which was forwarded in my No. 58, of March 17, 1879) within the views on this subject expressed in the last part of Department's instruction No. 41, of May 12, 1879, I entered upon a negotiation with the Colombian secretary of foreign relations suggesting such a modification of article 3 of the protocol above mentioned as would remove the objectionable feature pointed out by the Department.

After repeated conferences on this subject we agreed upon such a modification of article 3 of the protocol executed on the 22d day of February, 1879, as will leave any prisoner of the United States to be transported across the Isthmus of Panama in the custody of a civil officer of the United States, who will be accompanied by a civil officer of the United States of Colombia. The duty of the latter officer will be, in the case of necessity, to provide for the due detention and transport of such prisoner.

The agreement arrived at between the Colombian Government and myself was embodied in a new protocol executed on the 23d day of October, 1879 (copy of which, as well as of the preliminary correspondence to the same), is respectfully inclosed.

I venture to express the hope that article 3 of the protocol of February 22, 1879, as modified by that of October 23, 1879, will be found to meet the views of the Department.

I am, etc.,

EARNEST DICHMAN.

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[Inclosure 1 in No. 156.]

Mr. Dichman to Señor Rico.

LEGATION OF THE UNITED STATES,
Bogotá, Setempber 4, 1879.

SIR: Referring to the protocol executed on the 22d of February, 1879, between your honorable predecessor, Dr. Pablo Arosemena, and myself, on the subject of the right of transport claimed by the United States under the thirty-fifth article of the treaty of 1846, I take pleasure in informing you that the same is accepted by the Government of the United States as a just recognition on the part of the Colombian Government of its obligations under the said treaty, and as a due consideration of the heavy contingent liability which the obligations of the same treaty impose upon the United States.

At the same time I beg to state that it is thought at Washington that the third article of the protocol might perhaps have been scarcely necessary, inasmuch as the custody of a prisoner, under the circumstances to which the protocol applies, is almost always assured by means of a civil officer, and I would, therefore, thank you to take the said third article of the protocol and the correspondence between this legation and your department relating to the same into consideration, with a view of making such a change in the third article of the protocol as would leave it optional with the officers of the United States to require national or State troops as a guard.

I am, etc.,

ERNEST DICHMAN.

PROTOCOL.

At a conference held at the department of the interior and of foreign relations at Bogotá on this the 23d day of October, 1879, between the secretary having charge of said department, Luis Carlos Rico, and the Hon. Ernest Dichman, minister resident of the United States of America, both having been clothed with ample powers by their respective Governments to examine the statements made by that of the United States of America, and communicated to its legation at this capital, with respect to the amendment of article 3 of the protocol, which was signed on the 22d day of February of the present year, in reference to the right of transit of the American Government via the Isthmus of Panama, it was agreed to modify the said article 3 as follows:

ARTICLE 3.

The custody of prisoners whose transportation across the Isthmus of Panama shall be requested by the Government of the United States of America of that of the United States of Colombia shall be exercised by a civil officer of the United States of America, accompanied by a Colombian civil officer, who shall ask of the proper authorities, if necessary, the assistance of the national or State forces in order to secure the due detention and transportation of the prisoner.

In testimony whereof they sign and seal two copies of this protocol at Bogotá on the 23d day of October, 1879.

[SEAL.] LUIS CARLOS RICO.
[SEAL.] ERNEST DICHMAN.

Mr. Evarts to Mr. Dichman.

No. 107.] DEPARTMENT OF STATE,
Washington, April 19, 1880.

SIR: Your recent visit to this country for the purpose of consultation with the Department will have afforded you an opportunity to estimate the extent and force of public opinion upon the subject of an interoceanic canal, and as you have returned to the residence of your mission, it is proper that I should put you in possession of those views which it seems now to become the duty of this Government to express.

It is a matter of surprise to the President that the Government of

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Colombia has not deemed it natural and suitable, in view of the treaty relations between the two countries, to inform the Government of the United States of the concession which has been recently granted to Mr. Wyse, and with the consent of that Government, has been transferred to M. de Lesseps. By the treaty of 1846, the United States are guarantors of the neutrality of any interoceanic canal through the Isthmus of Panama, and of the sovereignty of the Republic of Colombia over the territory through which it passes.

If we are rightly informed, no other Government has been willing to come into any such treaty relations with Colombia, and to-day such a canal, by whomsoever completed, would need to rest upon this stipulated protection of the United States, and should the United States recognize their rights under this concession, both its projectors and the Government of Colombia would be authorized, under certain contingencies, to call upon and be wholly dependent upon this Government for the fulfillment of this obligation. Under such circumstances the United States would have considered it as the manifestation of a just and friendly spirit if the Government of Colombia had furnished us timely information of the proposed concession, and thus enabled us to judge whether the conditions under which our guaranty had been made, had been preserved with due consideration, both of the rights which that guaranty confers and the obligations which it imposes. Indeed, it is proper for me to say that it is difficult for us to understand how, under the treaty of 1846, the United States could be considered, either by the parties seeking the concession or by the Government granting it, as otherwise than deeply, properly, and directly interested in any transaction of the Government of Colombia in reference to an interoceanic connection, entitled not only to the frank communication of all its details, but to the privilege of making that communication the subject of careful consideration and friendly representation.

The archives of your legation and the voluminous correspondence between the two Governments on this very subject from the date of the treaty of 1846 to the present day supply sufficient evidence that this treaty, subject to termination by twelve months' notice, is, in the absence of such notice, still in force. And if the language of the eighth article of the Clayton-Bulwer treaty of 1850 between the United States and Great Britain be accepted as indicating the willingness of the United States that other nations should share the rights and obligations of the guaranty of the treaty of 1846, it is equally clear that such participation could only be attained by some new diplomatic engagements in which the United States, as contracting party under both the treaty of 1846 and the Clayton-Bulwer treaty of 1850 would judge of and define the circumstances and stipulations under which it would accede to such new engagements.

Without attempting to appreciate the motive of this unexplained reticence on the part of the Government of Colombia, and ready to accept in the most friendly spirit any satisfactory representations which may be offered regarding it, the Government of the United States yet finds itself, by events of too public a character to be neglected, compelled to consider what may be the consequence to its rights and interests of the recent action of the Government of Colombia.

We are now sufficiently, if not officially, informed that the Government of Colombia has granted to a citizen of the French Republic the exclusive right to construct an interoceanic canal across the Isthmus

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of Panama. It is true that the Government of the French Republic, in a spirit of friendly consideration which we cordially recognize, has promptly and emphatically assured us that it has had, and now has, no connection in any form, directly or indirectly, with this enterprise. But it can not be overlooked that by the thirty-fifth article of the treaty of 1846 the United States has not only, "in order to secure to themselves the tranquil and constant enjoyment" of the advantages of that treaty, undertaken to "guarantee positively and efficaciously to New Granada" "the perfect neutrality of the before-mentioned Isthmus," but they have further obliged themselves to "also guarantee in the same manner the rights of sovereignty and property which New Granada has and possesses over the said territory."

While, therefore, the United States have perfect confidence in these representations, as well as in the strong friendship of the French Government, it can scarcely be denied that such a concession to foreign subjects would introduce new questions of relative rights and interests affecting both the sovereign and proprietary rights of the Government of Colombia, and such as would seriously enlarge the responsibilities of our treaty guaranty; and this Government feels that it is not unreasonable in expecting that any concession involving such consequences should be a subject of joint consideration by and that its details can scarcely be settled without a preliminary agreement between the Governments of Colombia and the United States as to their effect upon existing treaty stipulations. The Government of the United States is neither prepared nor disposed to enter upon a discussion with the Government of Colombia of the details of a concession neither the fact nor the particulars of which have been officially communicated to it. And it must be understood as reserving to itself the right of examination and judgment upon any such transaction, when, if at all, it shall have been communicated by the Government of Colombia.

But the treaty of 1846 has established certain general relations between Colombia and the United States, to which it is deemed opportune at this time to ask the attention of the Columbian Government.

If any projected enterprise to construct an interoceanic canal through the Isthmus of Panama could be considered merely as a financial speculation or a commercial undertaking it would not assume so grave an importance.

In all the language that this Government has ever used, in all the action it has ever proposed, in reference to an interoceanic canal, it has expressed not only its willingness, but its anxiety that such an enterprise should be for the benefit of the world's commerce, and in no proposition that it has ever made has it sought for its citizens or its commerce special advantages. The Government of the United States might therefore be willing in the matter of the mere mercantile interests of its citizens to trust to the intelligent self-interest of those who undertake its construction to see that reasonableness and equality of tolls, simplicity of regulation, and perfect impartiality of treatment should be made the inducements to draw the commerce of all nations to its channel. But it can not be concealed, and the Government of the United States does not desire to conceal, that its relations to this enterprise must be governed by larger and more serious considerations.

This enterprise, once achieved, works more than a commercial revolution. It touches the conditions under which the security of the ter-

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ritory of the United States may need to be maintained. While the United States feel no concern as to the adequacy of their power to meet any emergencies that may arise; while there is no issue in the world's politics which at all threatens their tranquillity; while their relations with all nations are and promise to be those of peace and good will, yet it is unwise not to anticipate as possible contingencies which may expose our systems to trials, not now obvious or probable.

In case of war, with our present geographical condition, our Pacific coast is so situated that with our railroad connections time would always be allowed to prepare for its defense. But with a canal through the Isthmus the same advantage would be given to a hostile fleet which would be given to friendly commerce; its line of operations and the time in which warlike demonstration could be made would be enormously shortened. All the treaties of neutrality in the world might fail to be a safeguard in a time of great conflict.

The Government of Colombia can scarcely be unaware that these considerations have before this occupied both itself and the Government of the United States. Since the date of the treaty of 1846, when the United States, at the request of the Republic of Colombia, undertook the guarantee of the neutrality of the isthmus and the sovereignty of Colombia, there have been, as you know, several negotiations in reference to the same interest. It is unnecessary to recall to your attention the causes which prevented the final settlement of these discussions, but I feel confident that the Government of Colombia will admit that in these negotiations there was one principle always assumed as their basis, and that was the construction of the canal by the Government of the United States or an association of their citizens to whom the Government of the United States might transfer the privileges and franchises of the concession. It was the recognition of this principle which enabled the United States, with due regard to their own rights and responsibilities, to accept the system of the freest participation of all nations in the commercial advantages of the connection. But this condition would be materially altered and even disturbed if without some certain and safe guarantee against the possible dangers which the unfortunate suspension of peaceful relations with the world might cause if the canal was itself the property of parties whose interests might be at variance with our own.

You will therefore take the earliest opportunity to say to the Government of Colombia that it is a source of profound regret to this Government that the Government of Colombia has hitherto refrained from such communication upon the subject of the recent concession as the treaty relations between the two countries justified us in expecting. And in this connection you will impress upon the Government of Colombia that there is nothing which this Government more earnestly desires, and has more sincerely sought, than the confidence of its sister Republics of South America, and that in all their efforts for the maintenance and increase of their dignity and prosperity the United States would gladly give them due countenance and support.

You will say further that if neither the Government of the United States nor its citizens find themselves encouraged or warranted in undertaking this great enterprise this Government does not claim the right to impose its own views of the impracticability of the connection upon Colombia or upon the world. It simply demands, as it thinks

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the interests of both the South and North American republics require that such an enterprise should be the subject of their joint consideration with a view to the protection of those interests which bind these persons together as closely as other interests and relations bind the European powers.

And you will add finally that this Government can not consider itself excluded by any arrangements between other powers or individual to which it is not a party from a direct interest, and, if necessary, a positive supervision and interposition in the execution of any project which by completing an interoceanic connection through the isthmus would materially affect its commercial interests, change the territorial relations of its own sovereignty, and impose on it the necessity of a foreign policy, which, whether in its feature of warlike preparation or entangling alliance, has been hitherto sedulously avoided.

The long-established and amicable relations between the Government of Colombia and the United States ought to be an assurance to that Government of the friendly spirit in which this communication is made. The Government of Colombia is well aware that its proposition to the great maritime powers to join in the guarantee of the neutrality of the Isthmus and the sovereignty and proprietary interests of Colombia heretofore made was declined, and the reasons for their unwillingness to assume this great responsibility are of course of record in the diplomatic archives of the Colombian Government. Should this interoceanic connection ever be accomplished, and should its control become, in the complications of international relations, a matter of importance to any power, it will surely not be deemed by the Colombian Government either disrespectful or unfriendly to suggest that the military strength of the Government of Colombia would be inadequate to maintain its security or its neutrality, and that the enforcement of the guarantee of the United States would probably be sought as it has been before. Should the possibility of such a necessity become, under altered circumstances, a probable occurrence, it would be the duty of the United States, not only to themselves, but to the Government of Colombia, to see that they were in position to enforce the guarantee which existing treaties impose upon them, and which their feeling of sincere friendship for the Government of Colombia would induce them to fulfill with scrupulous fidelity.

I am, sir, your obedient servant,

WM. M. EVARTS.

Mr. Evarts to Mr. Trescot.

DEPARTMENT OF STATE,
Washington, February 15, 1881.

SIR: You will receive herewith a copy of a memorandum indicating the subject and scope of a conference between the Colombian minister and myself in relation to certain projects of treaty which have been considered by us. You are already advised of the general situation of the subject as hitherto treated between this Government and that of Colombia.

You will proceed to New York, and in an interview with the Colombian minister, who has been advised of your coming, you will, guided by this memorandum, submit to him the views of this Department.

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Should the result of your conference be an indication on his part of his authority and readiness to conclude a treaty upon the modifications suggested, you will inform him that I am prepared to renew our conferences upon that basis in the expectation of a conclusive arrangement. But if, as is more probable, you find that he considers himself only authorized to refer to his Government the views entertained between you, your object will be by free and frank consultation to ascertain how far his opinions and those expressed by me in the memorandum promise the possibility of an accord upon the subjects embraced which will justify positive instructions in that sense to the United States minister at Bogotá.

You will bring or forward a report of your interview in the shape of a *précis* of the conversation between you.

It is hoped that such a report can reach this Department in time for the next mail to Panama. But if you find this impossible, you will inclose a copy of such report in the letter addressed to Mr. Dichman, which is sent you with this, and mail the letter and inclosure so as to secure its transmission from New York by the mail which leaves immediately after your interview with the Colombian minister.

I am, sir, your obedient servant,

WM. M. EVARTS.

Mr. Evarts to General Santo Domingo.

DEPARTMENT OF STATE,
Washington, February 15, 1881.

MY DEAR GENERAL SANTO DOMINGO: I have the pleasure to introduce to you the Hon. William H. Trescot, who has received from me instructions and authority to continue, on the part of the Department, the conferences which have engaged our attention up to the moment of your leaving Washington.

However much I may regret that you have thought yourself obliged to leave this capital with our conferences not advanced to a conclusive result, I deem myself fortunate in being able to confide the further treatment of the matter to so experienced and accomplished a representative of the views of the Department as Mr. Trescot. He has become fully possessed of the whole posture of the two Governments, as it has appeared in the treatment of the subject between us, and of the views which I should further have pressed upon your attention had you remained in Washington. He will, I hope, receive the same confidence on your part in meeting these views in the same frankness that you would if offered by myself.

I venture to anticipate that you may be able to come to such an accord as may furnish the material of a preliminary protocol, if not of a definitive convention.

Wishing you a prosperous voyage, I am, my dear general, yours, very truly,

WM. M. EVARTS.

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Mr. Trescot to Mr. Evarts.

WASHINGTON, *February 18, 1881.*

SIR: I have the honor to inclose herewith a protocol signed on the 17th February, 1881, by General Santo Domingo Vila, envoy extraordinary and minister plenipotentiary of the Government of the United States of Colombia, and myself, representing the Secretary of State of the United States of America, under instructions from you.

At my first interview with General Santo Domingo, I submitted to him the memorandum with which I was furnished by you, containing a *précis* of the character and scope of the conferences heretofore had between yourself and the Colombian minister.

You will find, I hope, that the protocol contains sufficiently full and satisfactory declarations upon the points under discussion, with the exception, perhaps, of the provision of the first article of the project which you submitted to his consideration.

That article was intended to declare that any concession for the execution of an interoceanic canal, heretofore made or hereafter to be made by the United States of Colombia, was and should be subject to the rights of the United States of America as guarantor of the neutrality of the Isthmus and of the sovereignty of Colombia over isthmian territory secured to the United States by the thirty-fifth article of the treaty of 1846, and that the consent of the United States of America must be considered as a preliminary necessary to the validity of any future grant or the modification of any existing one.

General Santo Domingo recognized that no rights secured to this Government by the older treaty could be subordinated to rights conferred by the more recent concession; and in the first declaration of the protocol it was distinctly declared that the right of the Government of the United States to the free use of the canal for its war vessels was superior to the right granted the holders of the concession, in article 5, to levy tolls upon all such vessels, except only the war vessels of Colombia.

He was unwilling to make such a declaration as seemed to him to imply that there had been such an infringement of our treaty rights by the grants of the concession, which, as a fact, he did not admit. He thought the relations established by the treaty made the right of the United States so plain to insist upon the observance of article 35 and to lay before the Colombian Government, by protest or otherwise, any provision of the concession which was deemed an infraction of the treaty, as to require no more specific declaration. But he was not willing to accept the protest of the United States as, *ipso facto*, rendering any provision of the concession which might be complained of inoperative, for that would seem to dispense with the necessity of amicable consultation for the purpose of removing the supposed difficulties. If such consultation reached no satisfactory solution, the power and right of the United States were indisputable, and the question would be then one of those in which each Government would be free to maintain its position by adequate means and in view of its general interests.

As the first declaration of the protocol had recognized, in the only practical case, the superiority of the treaty obligation; as the other declarations established an accord between the two Governments in the construction of the rights secured by article 35 of the treaty; and as

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the Government of the United States had in former diplomatic communications to Colombia indicated its dissatisfaction with the grant of the Wyse-Salgar concession without its previously obtained consent, and had explicitly informed the Colombian Government that the necessity for such consent was and would be maintained as a consequence and function of the guarantee undertaken by the treaty of 1846, I deemed it best not to press further the present consideration of article 1 of the project, and to reach, if possible, a practical accord which might even deprive its future discussion of any large consequence.

This, I think, was reached in the third declaration of the protocol, in which Colombia accepts the concurrence of the United States in any modification of the tolls and regulations of the canal-transit now established, which, *for any cause* Colombia may see fit to require. The cause for such intervention on the part of Colombia might be any apparent conflict between the rights secured by treaty and such as are granted by concession.

The other declarations of the protocol would seem to cover all the provisions of the project:

1. The equal freedom of the use of the canal by the Governments as well as by the citizens of Colombia and the United States.

2. The authority of the United States, in execution of its guarantee, to occupy the territory of the Isthmus and to provide the necessary basis for military and naval operations; and the adoption, by convention, of such methods as may be found most fitting for the cooperation of the two Governments.

3. The right of the two Governments to close the canal in time of peace to the war vessels of all other nations.

In discussing this last declaration, General Santo Domingo recognized that a contingency might arise it which the interests of the United States would require the canal to be closed to the war vessels of some other nation, and the relations of the two nations were such as to justify the United States in expecting the concurrence of Colombia. But in such case he observed that the nation so excluded might resent the exclusion even to war, and that the guarantee of the United States was confined to the Isthmus, and the rest of Colombia would be thus exposed to hostile demonstration without responsibility on the part of the United States for its defense.

While, therefore, willing to accept the general principle that, as matter of right, the canal should be closed to the war vessels of all nations other than the two contracting parties in time of peace, but that its innocent use should be allowed to such vessels, subject to such regulations and restrictions as the two powers might jointly adopt, he thought that in case the United States required such closing of the canal, it should be prepare dto cooperate with Colombia in the resistance of any attack that might be made on its sovereignty or territory in consequence of such action.

This condition seemed to me so reasonable and was in fact so entirely the line of conduct which the United States would have necessarily to adopt, if the circumstances occurred, that I had no hesitation in shaping the declaration as you will find it in the protocol; stating clearly and explicitly the principle of the closing of the canal in time of peace to the war vessels of other nations, and defining with precision the obligation which the United States would assume in the contingency contemplated.

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Having reached this accord, I informed General Santo Domingo that I was authorized to say that "you were prepared to renew your conferences upon that basis, in the expectation of a conclusive arrangement."

He replied, that the necessity for his immediate departure was urgent and his presence as a member of the Colombian Senate of pressing importance; that our accord, formulated in a protocol, would enable him to lay the whole subject before the Colombian Government in such a light as to secure a treaty on that basis, either through the official action of the United States minister at Bogota, or through renewed negotiation with him on his return here in June.

Under these circumstances, I felt that I was best carrying out my instructions by signing the protocol, and submitting it for your approval.

I am, sir, very respectfully,

WM. HENRY TRESCOT.

PROTOCOL.

The United States of Colombia recognizing—

That the construction of an interoceanic canal through the Isthmus of Panama will render more onerous the obligations of the United States of America assumed by the said United States in the thirty-fifth article of the treaty of 1846, between the United States of America and the United States of Colombia, then known as the Republic of New Granada;

That the United States of Colombia are bound to concur with the United States of America in the maintenance of the neutrality of the Isthmus of Panama and of the sovereignty of the United States of Colombia over the territory of the said isthmus, guaranteed by the thirty-fifth article of the said treaty;

General Santo Domingo Vila, envoy extraordinary and minister plenipotentiary of the United States of Colombia to the United States of America, and William Henry Trescot, of South Carolina, for that purpose authorized and empowered to represent the Secretary of State of the United States of America, have signed this protocol, containing the following declarations:

I.

That, in conformity with the above-recited treaty of 1846, any interoceanic comminication through the Isthmus of Panama, by canal or otherwise, shall be as free and open to the Government and citizens of the United States of America as to the Government and citizens of the United States of Colombia, except in case, which God forbid, of war between the two nations.

II.

The two Governments will by common accord select such points in the territory of said isthmus as they may deem proper for fortification, temporary or permanent, and for military and naval depots, coaling stations, and dockyards, and will provide by convention for the occupation and establishment of such depots, stations, and fortifications.

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And if the case contemplated in article 35 of the treaty of 1846 should occur and the sovereignty of the United States of Colombia over the Isthmus of Panama, or the neutrality of the transit across said isthmus, be threatened, the United States of America are authorized to occupy and maintain such threatened territory during the existence of such exigency in cooperation with the military forces of Colombia and in the defense of said sovereignty and territory.

But it is also understood that in time of peace, and no exigency existing in the judgment of the two Governments, no military force (other than such detail as may be arranged by the two Governments for the repair and preservation of fortifications and military stores, and the maintenance of docks, naval stations, and coal depots) shall occupy the said fortifications or be stationed within the said territory, except such military forces as shall belong to the United States of Colombia.

III.

That in case the United States of Colombia find cause to intervene for the modification of the tolls or regulations established by the holders of any concession of the said Government for the execution of said interoceanic communication, the Government of the United States of Colombia will accept the concurrence of the United States of America in the adjustment of such tariff.

As the United States of Colombia and the United States of America are the only nations who have by treaty guaranteed the neutrality of transit across the Isthmus of Panama, and as the United States of America have further by treaty guaranteed the sovereignty of the United States of Colombia over the territory of said isthmus, the canal shall not be considered open as matter of right in time of peace to the war vessels or military transports of any nations except the said United States of Colombia and United States of America. But the said two contracting parties agree that they will declare the said canal open to the innocent use of the war vessels of other nations, subject to such regulations and restrictions as the said two contracting Governments may jointly adopt.

But it is understood that if at any time the two Governments should concur in withdrawing such declaration and closing the canal to the war vessels of other nations, and danger should threaten the sovereignty or territory of the United States of Colombia in consequence of such action, the United States of America will cooperate with the United States of Colombia in the means necessary for the defense of the sovereignty and territory so threatened.

Signed by us in the city of New York, on the seventeenth day of February, in the year of our Lord one thousand eight hundred and eighty-one.

WM. HENRY TRESCOT.
SANTO DOMINGO VILA.

The agreement upon the points embraced in this protocol of the same accords with my views and has received the approval of the President.

The question, however, as to whether other points might not need to be entertained as a part of a formal convention on the basis of article 35 of the treaty of 1846 is not understood by me to be precluded by this protocol.

WM. M. EVARTS.

FEBRUARY 18, 1881.

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General Santo Domingo to Mr. Evarts.

LEGATION OF COLOMBIA IN WASHINGTON,
New York, February 18, 1881.

SIR: The undersigned, minister of Colombia, has the honor to inform his excellency the Secretary of State that yesterday he and the Hon. William Henry Trescot, as the representative of his excellency, signed the protocol of this same date, in which are embraced the most important points relating to the guarantee of the sovereignty of Colombia in the Isthmus of Panama and the neutrality of the interoceanic passage [via] to be opened there, according to the treaty of 1846 existing between this and that Republic.

Having little time at his disposal, as the undersigned is on the point of starting for Colombia, he limits himself to giving this notice to his excellency, adding at the same time the expression of his sincere desire that the bases agreed upon may soon acquire the form of a complete treaty, which will doubtless be the case before long.

The undersigned takes leave of his excellency renewing the assurances of his high consideration and esteem.

R. STO. DOMINGO VILA.

Mr. Becerra to Mr. Blaine.

UNITED STATES OF COLOMBIA,
DEPARTMENT OF FOREIGN RELATIONS,
Bogotá, May 7, 1881.

SIR: Our representative at Washington having returned to this city, has laid before the Government the minute or protocol which was signed by him conjointly with Mr. Trescot, your excellency's commissioner, in the city of New York, on the 17th day of February last, and which contains declarations with regard to the sense, scope, and manner of execution of article 35 of the treaty of 1846 between the two Republics, in reference to the neutrality of transit across the Isthmus of Panama and the rights of sovereignty and dominion of Colombia over that portion of her territory.

After maturely considering the declarations made in that protocol in the name of this Republic, my Government regrets to find them at variance with the instructions which were transmitted to our representative, and with the means which we deem best adapted to prevent any extension of the obligations contracted by both nations by the treaty of 1846, and to avoid the dangers which might arise, both for them and for the other Republic having territory on the Pacific from the substitution of a ship canal across the Isthmus of Panama for the present barrier, which is the isthmus itself. Inasmuch as that work is to be for the benefit of the world's commerce, it is not just that it should entail exceptional charges or costs upon the nation that generously offers its territory for the purpose, or upon the American Government.

In view of these facts, and as Colombia has ever been actuated by an earnest desire to promote the safety and the commercial interests of both nations by reason of their mutual, firm, and sincere friendship,

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the Government of the undersigned hopes that it will be able to continue the negotiations at Washington with as little delay as possible, and that the temporary interruption which has occurred will not be displeasing to your excellency, since the work of the canal has scarcely been commenced, and can not be finished for a number of years to come.

With sentiments, &c.,

RICARDO BECERRA.

PROJECT OF PROTOCOL SUBMITTED BY COLOMBIAN MINISTER, GENERAL SANTO DOMINGO-VILA.

Considering that the United States of America, by section 1, article 35, of the treaty now in force between the two countries of the 12th of December, 1846, has bound itself to guarantee to the United States of Colombia their sovereignty over the territory called the Isthmus of Panama, and the neutrality of transit through that territory;

That the possible opening of the canal will render still graver the obligations contracted by the Government of the United States of America;

That it is the duty of Colombia to concur with the United States of America in the defense of her territory and the neutrality of the aquatic passage from one sea to the other;

The two Governments, namely, the United States of Colombia and the United States of America, have agreed to amplify the existing treaty of peace, friendship, navigation, and commerce between the Republic of New Granada and the United States of America of the 12th of December, 1846, in the following terms:

I.

(A.)

For the purpose of the guarantee of the neutrality and the sovereignty of Colombia over the territory called the Isthmus of Panama, by the United States of America, according to the section and article above cited of the treaty of the 12th of December, 1846, it is understood that said territory is the same comprised at present in the State of Panama in the Colombian Union, and that the neutrality and sovereignty guaranteed embraced the entire extent of that territory.

(B.)

The guarantee of neutrality consists in this, that the United States of America shall, by all adequate measures, including a belligerent alliance with the United States of Colombia, prevent said territory from being converted into a theater of hostilities by any power or foreign force; and if this shall have taken place without it having been possible to prevent it in time, the United States of America shall assist with Colombia in its defense as long as hostilities last, and shall oblige the responsible power to make the proper reparation.

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(C.)

The guarantee of sovereignty consists in this, that the United States of America shall, by the necessary measures, including the use of force, prevent the territory in question from being the object of conquest or usurpation, or of intrigues which shall tend to separate it from the Colombian Union, employed by any foreign power.

(D.)

The expenses incurred by the United States of America in the fulfillment of the engagements entered into for the defense of the sovereignty of Colombia over the Isthmus of Panama and its neutrality shall be at the charge of the Treasury of the United States of America.

II.

With the object of facilitating to the United States of America the fulfillment of the obligations which they have contracted by the treaty of the 12th of December, 1846, to which the foregoing article refers, the two contracting parties have agreed as follows:

(A.)

Colombia will lend to the Government of the United States of America all the facilities which may be in her power, including permission for the temporary occupation of the territory threatened or invaded, as long as the emergency may last.

(B.)

The Governments of Colombia and of the United States of America, of common accord, shall designate on the coasts of the Isthmus of Panama two places where there may be erected works of defense, permanent or temporary, where there may be established coaling stations for the provision of the naval forces which the two nations may have at their service.

(C.)

As long as there is no occasion for the United States of America to assist with Colombia in the defense of the sovereignty of the latter over the territory of the Isthmus of Panama, and in the maintenance there of neutrality, the custody of the defensive works which may be constructed shall be at the charge of the Government of Colombia.

(D.)

The American forces destined by the Government of the United States of America to act in concurrence with those of the Government of Colombia in the defense of the sovereignty and neutrality of the territory of the Isthmus in their relations with the Colombian authorities shall exercise their functions in the territory of Colombia in the same terms which the constitution prescribes for their exercise by the national forces of Colombia.

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(E.)

The military operations shall be under the charge of the commander in chief of the Colombian or American forces who may hold the greater number of military stations in the field of operations.

(F.)

In case the President of Colombia shall assume the command of the Colombian armies, and shall be present in the field of operations, these forces, and those of the allied armies employed there, shall act under his immediate command.

(G.)

With the exception of the case which is merely possible, not probable—and please God never shall occur—of war between the United States of Colombia and the United States of America, transit shall be permitted through the above-mentioned canal—first, to the ships of war of the United States of America at all times, whether the United States are or are not engaged in war; second, of the troops of their Army or Navy which it may be necessary to transport from one shore to the other of the American Union, with the proviso that they shall pass without arms through the waters of the canal and integral part of the Colombian territory; and thirdly, of every class of supplies for the service of men-of-war and of troops.

III.

For the security of transit through the Isthmus of Panama against internal political disorders, the Government of the United States of Colombia will always maintain in that territory a national armed force sufficient to preserve tranquillity and public security against revolution, mutiny, or disorder of any kind.

IV.

For the fufillment of the obligations contracted in the present treaty, the two contracting parties shall proceed always in good faith and entirely in accord.

COUNTER PROJECT FROM THE DEPARTMENT.

Whereas the United States of America, by Section I, article 35, of the treaty now in force between the two countries of the 12th of December, 1846, have bound themselves to guarantee to the United States of Colombia their sovereignty over the Isthmus of Panama and the neutrality of transit through that territory;

Whereas the possible opening of an interoceanic canal through the said Isthmus will render still graver and more onerous the obligations contracted by the Government of the United States of America;

And whereas it is the duty of the United States of Colombia to support and facilitate the United States of America in the maintenance and protection of the sovereignty and neutrality of the said Isthmus;

Now, therefore, the two Governments have agreed:

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I.

That all concessions or grants heretofore made, or hereafter to be made, by the Government of the United States of Colombia for the purpose of securing the completion of an interoceanic canal across the Isthmus of Panama are, and shall be, subject to the rights accruing to the United States of America in virtue of the guarantee by the said United States of America in the thirty-fifth article of said treaty, and the exercise of which may become necessary for the proper discharge of the obligations therein undertaken. And no such concession or modification of any such concession can or shall be hereafter made without the consent of the said United States of America.

And in execution of this provision any such concession made or to be made shall receive the approval of the said United States of America before the work authorized by such concession shall be undertaken or commenced.

II.

That while the sovereignty of the United States of Colombia over the territory of the said Isthmus shall not be divested, the use of the said canal shall be as free to the Government and citizens of the United States of America as to the Government and citizens of the United States of Colombia; and the Government and citizens of the United States of America shall be subject to no other tolls or conditions upon its use than are charged upon the Government and citizens of the United States of Colombia.

Whenever the canal shall become the property or shall come into the beneficial possession of the United States of Colombia the Government of the United States of Colombia shall hold it as a trust for the commercial world, collecting only such tolls as are necessary for its proper administration and as reasonable revenue to that Government according to its general taxation of real and personal property.

III.

That, in order to maintain efficaciously the said guarantee, the Government of the United States of America shall have the right to occupy and fortify such places in the ports and harbors at the termini of the said canal as may be deemed by the said Government necessary and fit for the establishment of coaling stations, naval depots, shipyards, and docks, and the Government of the United States of America shall have the further right to establish and occupy at the entrances of said canal, or along the line of its construction, such fortifications as the said Government may deem necessary for the maintenance and protection of the neutrality of said canal and the sovereignty of the said United States of Colombia. And the selection of such naval stations and the location of such fortifications shall be made by the two Governments, and they shall together regulate the mode and extent of the occupation thereof; and the expense of their construction, maintenance, and occupation shall be at the cost of the United States of America.

IV.

That in time of peace the canal shall be free and open to the mercantile marine of all nations upon payment of the tolls and compliance

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with the regulations which may be established therefor under the supervision and with the consent of the two Governments. And, in time of war, the two Governments agree that neither will exercise the belligerent right of capture, detention, or blockage of merchant vessels within the limits of said canal, its ports, harbors, and dependencies, and such distance of open sea as may hereafter be determined, against the merchant vessels of any power which has, by treaty stipulation with the United States of America and the United States of Colombia, agreed to respect the neutrality of said Isthmus.

V.

That the canal is closed, as matter of right, both in time of peace and war, to the naval vessels or military transports, whether of troops or munitions, of all nations except the two contracting Governments; but the said Governments hereby agree to declare open to all vessels of war the harmless use of the canal communication in time of peace, subject to such regulations and restrictions as the said two contracting Governments may jointly adopt.

TENDENCIES OF THE DRAFT PRESENTED BY THE MINISTER OF COLOMBIA.

1. To recognize that the construction of a canal across the Isthmus of Panama increases the obligations contracted by the United States of America by article 35 of the treaty of 1846, which is now in force between the two nations; and to manifest the willingness of Colombia to facilitate the fulfillment of said obligations.

2. To determine the territory referred to by the guarantee of the sovereignty of Colombia over the Isthmus and of the neutrality of transit.

3. To define the circumstances under which it shall be the duty of the United States to assist Colombia in the defense of the guaranteed territory.

4. To state with precision the facilities which Colombia is ready to lend the United States for the fulfillment of the obligations contracted by them, among others, the designation, by common consent, by the two governments, of the places requiring temporary or permanent fortifications, of places suitable for coaling stations for the vessels of both nations, the occupation by force of the United States of America of the territory threatened or invaded, so long as the emergency shall last, and free passage through the canal for the war vessels of the United States.

TENDENCIES OF THE DRAFT PRESENTED BY THE HON. SECRETARY OF STATE.

1st. Article 2 tends to modify article 6 of the Salgar-Wyse convention.

2d. Article 3 is based upon the idea of the fortifications and permanent occupation of the canal and its appurtenances by forces of the United States of America.

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3d. Articles 4 and 5 tend to modify article 5 of the Salgar-Wyse convention.

It may easily be deduced from the comparison made that articles 2, 4, and 5 of the draft of the honorable Secretary of State are open to the same objections as article 1, which it has been determined not to discuss, in view of the fact that the undersigned minister does not consider himself authorized to agree in the name of his Government to any deviation from the Salgar-Wyse convention without the consent of the other party that has contracted with Colombia, which reason induced the undersigned to abstain from entering upon any discussion on the basis of article 1 of the draft of the Hon. Secretary of State, and to solicit fresh instructions from his Government.

With respect to article 3 of the draft of the Hon. Secretary of State, the undersigned takes the liberty to observe that if the fortification of the territory in question is to take place before the occurrence of the danger from which it is sought to guard that territory, he does not think that the permanent occupation of said territory by the forces of the United States of America is indispensable or even necessary, especially since Colombia will, the case arising, keep such an armed force on the Isthmus as may be necessary to protect the canal from surprise, thus giving the United States time, in any event, to come to its aid.

The undersigned, as he stated in the draft which he submitted to the consideration of the Hon. Secretary of State, would be willing to agree to permanent fortification, but only to temporary occupation; that is, during the prevalence of the danger recognized by the Government of Colombia.

R. STO. DOMINGO VILA.

WASHINGTON, *February 12, 1881.*

MEMORANDUM OF THE DEPARTMENT OF STATE ON THE COLOMBIAN PROJECT AND COUNTER PROJECT.

The project submitted by the Colombian minister recites that it is based upon three considerations:

1. That there is an existing guarantee of the neutrality of the Isthmus and of the sovereignty of Colombia over the isthmian territory, assumed by and now obligatory on the United States by virtue of thirty-fifth article, treaty of 1846.

2. That the probable opening of an interoceanic canal communication through the Isthmus renders still graver these treaty obligations.

That Colombia is bound to concur with the United States in the maintenance of this guarantee of neutrality and sovereignty.

In the value of these considerations the United States concur, and both parties are therefore agreed upon the reasons which render important stipulations in development and explanation of the former treaty.

The United States do not consider it necessary to describe more specifically the boundaries of the territory covered by the guarantee than they were defined and understood at the date of the treaty. Nor does it seem desirable to attempt a more precise description of the obligations of the guarantee than the treaty contains. The provisions of the treaty are sufficiently full and accurate in the description of the obliga-

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tions of the guarantee, and the United States do not desire either on the one hand to limit its existing responsibility or on the other to increase or extend its obligations. Besides which, the provisions of any supplemental treaty which may be agreed upon will, by the practical details for the execution of the guarantee which it may furnish, sufficiently define and limit the character of the treaty obligation for the execution of which it provides.

ARTICLE I.

This article declares that all concessions or grants heretofore made or hereafter to be made by the Colombian Government for the execution of an interoceanic canal are and shall be subject, in virtue of the guarantee of the thirty-fifth article, to the approval of the United States.

The Colombian minister objects to this, that it is inadmissible so far only as concerns any concession heretofore regularly made by the Colombian Government, for such concession must be considered as an executed contract. He recognizes as not unreasonable the right of the United States to demand the preliminary of their consent to any new concession or to the modification of any one now existing. Putting aside a discussion of the principle involved in this objection, it would seem quite possible to find ground for substantial agreement by so shaping the practical articles of the proposed supplemental treaty as to protect the rights of the United States accruing under the thirty-fifth article from any invasion by the grants of the concession. For if any sovereignty and character of Colombia are concerned in the maintenance of a contract which, however inadvertently, as far as the rights and interests of the United States are concerned, it has regularly and formally executed, that sovereignty and character are none the less concerned in the maintenance of a treaty which is a higher contract of an older date. Besides, as the text of the concession is now before both Governments it would be convenient to their common interests and obligations, under the existing treaty, for the United States to assign the clauses or provisions in the concession which seem objectionable, and for Colombia to undertake for their modification by the grantees, or, if impracticable, accept the protest of the United States as to their being inoperative as against the United States.

ARTICLE II.

This article provides that while the sovereignty of Colombia shall not be divested, the use of the said canal shall be as free to the Government and citizens of the United States as to the Government and citizens of Colombia.

The details of this article need not be recapitulated, for the objection of the Colombian minister seems to be confined to the claim of equality of use of the canal by the Government, although the commercial use by the citizens of the United States is not questioned.

The difficulty seems to arise from the provisions of the Wyse concession, which (article 6) declares:

> The United States of Colombia reserve to themselves the right to pass their vessels, troops, and munitions of war at all times without paying any dues whatever.

This provision is supposed to confer upon the holders of the concession the right to impose dues upon the vessels, troops, and munitions of war of all other nations, and, therefore, to be incompatible with the

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right claimed by the United States of the free and equal use of the canal by the Government as well as by citizens.

This concession was granted in 1878.

In 1846, in the thirty-fifth article of the treaty of that date, "the Government of New Granada guarantees to the Government of the United States that the right of way or transit across the Isthmus of Panama, upon any modes of communication that now exist or that may be hereafter constructed, shall be open and free to the Government and citizens of the United States," and then goes on to provide that no other tolls or charges for the use of this communication shall be levied upon the citizens of the United States than are levied upon the citizens of New Granada.

The stipulation is clear and explicit that the communication is "open and free to the Government" of the United States and "open and free to the citizens" of the United States, subject in case of the citizens to the collection of the same dues collected from citizens of New Granada.

And in order to secure themselves the tranquil and constant enjoyment of these advantages * * * the United States guarantee positively and efficaciously, &c.

That is to say, the United States guarantee the neutrality of the isthmus and the sovereignty of Colombia over its territory, upon the express condition that the canal communication shall be open and free absolutely to the Government and open and free conditionally to the citizens of the United States, the conditions being the same imposed upon Granadian citizens. Under this article the United States may justly claim that the freedom of use of the canal was theirs absolutely, whether the Colombian Government consented or not to the payment of toll for that use; but all they have asked is that the use of the United States shall be the same as the use of Colombia.

And it surely must have occurred to the Colombian minister that, if this right to levy toll upon the Government of the United States by the holders of the concession be admitted, the United States might find themselves not prevented from discharging the obligation of their guarantee, but annoyed and encumbered with heavy impositions and burdensome regulations whenever Colombia might require the use of their vessels, troops, or munitions of war in execution of the guarantee.

It cannot be supposed that the United States ever contemplated such a condition; and the language of the Colombian minister in reference to the obligation of the Colombian Government to maintain its concession once guaranteed would sufficiently justify the United States in declining to believe that the Colombian Government has ever intended or would now undertake to subordinate the provisions of the elder treaty to the stipulations of the later grant.

If this error has been inadvertently committed, it is for the Colombian Government to correct it; and, should that Government deem it needful, no difficulty ought to be anticipated in obtaining from the holders of the concession the requisite consent.

Article III.

This article recognizes that in order efficaciously to execute its guarantee the United States should be provided with a necessary base, both for military and naval operations, and refers the method of such preparation to a future convention.

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The Colombian minister, both in his project and conversation, accepts the principle of this article. He desires to limit its execution by the condition that in time of peace, and when no hostile exigency is apparent to the two Governments, the occupation of military positions should be entrusted to the Colombian Government, with such provision for the preservation of war material and fortifications as the United States might desire.

This suggestion would not be unfavorably received if confined to fortifications along the line of construction and perfected in detail by a convention. It could scarcely apply to naval stations, coal depots, or dockyards, which would from their character have to be held in continuous possession and occupation by the power using them.

But it would seem that there is no important difference on this article. Its principle is recognized by both Governments; it contains in itself provision for a convention to regulate details; and it is certain that neither the United States nor Colombia will desire to go to the heavy expense of military preparation without absolute necessity and the fullest opportunity for concerted action.

Article IV.

This article provides that in time of peace the canal shall be free and open to the mercantile marine of all nations upon payment of tolls and compliance with the regulations which may be established therefor under the supervision and with the consent of the two Governments.

This consent of the two Governments, as a preliminary to the establishment of tolls and regulations, is supposed to interfere with the right conferred by the concession upon its holders to determine the tolls and make the necessary regulations for the use of the canal.

Still waiving the question whether the consent of the United States to any concession is not made requisite by the thirty-fifth article, and assuming that the tolls and regulations do not infringe upon any right of the Government of the United States secured by the older treaty, this objection might be considered and obviated by an acceptance on the part of the United States of the tolls and regulations as ascertained by the concession if found reasonable, with the understanding or stipulation, however, that in case of difference between the holders of the concession and the Colombian Government the Government of the United States shall be consulted and its consent obtained to any change or settlement.

Article V.

This article provides that the canal is closed, as matter of right, in time of peace and war, to the naval vessels or military transports of all nations without the consent of the two Governments.

It is suggested by the Colombian minister that this is also an infringement of the right secured to the holders of the concession to levy tolls, &c., on the naval vessels of all nations except Colombia.

Article 5 of the concession does not seem to warrant this construction. Why it does not apply to the United States Government has been already stated.

As to other nations, all that article 5 strictly and properly interpreted gives to the holders of the concession is the right to levy toll upon the war vessels and transports of all nations except Colombia, *if they*

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are allowed to pass. But there is no obligation assumed by Colombia that they shall be allowed to pass. That is a question which, as to every nation other than the United States, Colombia must decide according to her interests, and it cannot be supposed that Colombia has in this article so far abdicated, not only her sovereignty, but her duty to regard what may be great political and territorial interests, as to deprive herself (in connection with her guarantor) of the right forever, under any and all circumstances, of closing the canal in times of peace to all war vessels. If this construction be correct, then the right of the holders of the concession to levy tolls, *when* such vessels pass, is not taken away by the preservation of the right of Colombia to decide that "when."

Besides which, this article contains a declaration that both Governments will agree that the canal shall be open to the harmless use of war vessels in time of peace, subject to such cautionary regulations as they may agree upon. And this would seem to remove the practical difficulty suggested as arising from article 5 of the concession.

[Translation of papers published by authority of the Colombian Government in Diario Oficial, Bogota, May 27, 1881.]

MINISTRY OF FOREIGN AFFAIRS.

The Government has ordered the following documents to be published relating to negotiations referring to the neutrality of the Panama Canal, and the guarantee of the dominion and sovereign rights of Colombia in that territory:

I.

PROJECT OF PROTOCOL*—EVARTS–AROSEMENA.

At a meeting for this purpose between the undersigned, William M. Evarts, Secretary of State of United States of America, and Dr. Justo Arosemena, minister resident of the United States of Colombia at Washington, taking into consideration that in view of the possibility of the present or future opening of a canal between the Atlantic and Pacific oceans, across the Isthmus of Panama, which canal will affect the interests of the United States in a notable manner, and whereas the first paragraph of article 35 of the treaty existing between both nations, dated December 12, 1846, contains important stipulations, not well defined, but which, with a clear understanding, will provide for all necessities which for both countries will arise from or be augmented by the opening of said canal, the undersigned, being fully empowered by their respective Governments, have agreed upon the following declarations:

1. (*a*) Whereas the first paragraph of the thirty-fifth article of the treaty of December 12, 1846, concedes to the Government of the United States, as well as to their citizens, the free right of way by whatever means of communication which exist, or which may be *constructed in future*, it permits virtually the transit through said canal—

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* This protocol "formed the subject of several conferences at Washington between Dr. Justo Arosemena (the former Colombian minister) and myself. This draft was proposed by Dr. Arosemena, and not found acceptable by Mr. Evarts, to whom it was submitted informally by me." (Extract from Mr. Dichman's No. 272.)

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1st. For all vessels of war of the United States at all times, whether the United States find themselves engaged in war or not.

2d. For the troops of their Army or Navy which they may find necessary to transport from one coast of the United States to the other, provided that the troops pass disarmed through the waters of the canal, which are an integral part of Colombian territory.

3d. For munitions of war for the service of the vessels and troops.

(*b*) From this concession, to which the paragraph refers, is excepted the case, barely possible, but not probable, and which God grant will never take place, of a war between the United States of Colombia and between the United States of America, in which eventuality, and while the same continues, the latter power shall not be permitted (free) to transport through the canal its vessels, troops, and munitions of war.

2. (*a*) Concerning the neutrality of and sovereignty of Colombia over the territory called the Isthmus of Panama, guaranteed by the United States of America, according to the paragraph and article cited from the treaty of 1864, it is understood that said territory is the same as is now embraced by the State of Panama in the Colombian Union, and that the neutrality and sovereignty guaranteed applies to the whole extent of said territory.

(*b*) The guarantee of neutrality consists in that the United States of America will prevent, by all adequate means, including that of making themselves belligerents as allies of the United States of Colombia, that said territory be made the theater of hostilities by any foreign power; or if it shall have taken place, the same not having been opportunely prevented, the United States of America will come to the defense while said hostilities continue, and compel the responsible (respective) power to make due reparation.

(*c*) The guarantee of sovereignty consists in that the United States of America will prevent, by all necessary means, including the use of force, that the territory referred to be made the object of conquest or usurpation, or of invidious steps tending to separate it from the Colombian Union by any foreign power or unauthorized private expeditions.

3d. In order to enable the United States of America to comply with the duties which they have under the treaty and to which the foregoing paragraph refers, they will employ, with all prudence, the indispensable measures while the emergency exists for which they are necessary. For this purpose and for their security, they will receive from the United States of Colombia all the facilities which they may have in their power, including the temporary occupation of the territory which may be threatened or invaded, and the right to fortify, also temporary, the places which may require it, both parties interested proceeding always in good faith and entirely in accord.

4th. (*a*) As soon as the above declarations shall have been definitely approved by the Governments which the undersigned represent, they shall be held as an explanation of the article of the treaty of 1846 to which they refer, and they shall continue as a part thereof during the existence of the treaty, according to the third paragraph of the same article.

(*b*) And whereas said declarations refer to the understanding (tenor) of an article of the treaty which may have an actual application, it is understood that they shall control, in order to decide any questions which may arise from the same, independently of the opening of an interoceanic canal.

In faith whereof, &c.

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II.

PART REFERRING TO THE INSTRUCTIONS FORWARDED TO THE MINISTER OF COLOMBIA IN WASHINGTON.

With regard to the interoceanic canal across the Isthmus of Panama, which seems to present some chance of being realized, you will naturally do whatever may be in your power to persuade the United States Government that the existing treaty between Colombia and the United States gives to the latter power all the influence that need be desired over the enterprise, besides which the said treaty may be amplified in any sense the United States might consider convenient, by affirming the Monroe doctrine, to which the United States of Colombia adheres without the slightest reservation. Your predecessor, Dr. Arosemena, drew up the project of a protocol extending that article of the treaty which refers to the transit across the Isthmus of Panama and duly forwarded it to the Secretary of State, but this functionary failed to take the matter into consideration, probably because the circumstances were unfavorable on account of the electioneering excitement. While the negotiation progresses you may hint, directly in the same sense he did, employing therein all the prudence which distinguishes your character; and in case your insinuation should be well received, you may proceed to modify the treaty, adopting as a guide the beforementioned project of protocol, which ought to be in the archives of the Colombian legation.

III.

Protocol of the 17th of February—Trescot-Santo Domingo Vila, *vide* page 374, *ante*.

IV.

NOTE OF THE NEGOTIATING MINISTER UPON THE FORMER PROTOCOL.

COLOMBIAN LEGATION IN WASHINGTON,
In Commission—Bogotá, April 22, 1881.

MR. SECRETARY OF FOREIGN AFFAIRS: Having been authorized by the citizen President of the Republic to present myself in this capital to render an account of the mission confided to me to the United States of America, I have the pleasure to hand to the department of foreign affairs a detailed report comprehending the course and termination of the negotiations in question, thus complying with the instructions communicated to me dated November 1, 1880.

For the purpose of making the narrative more simple and in order, I will treat each one of the points indicated in the instructions separately, taking them in the order therein established.

(B.) The first point of the instructions says as follows:

It being of the highest importance that Colombia should maintain the most cordial relations with the United States, you will not omit, during your mission, any means to attain this object, provided they be legitimate and honorable. You are aware that certain complications may arise with the neighboring republics, in which case it is necessary that we should possess in the United States, if not an ally, at least a decided friend to interpose his influence and weight in America, in order to avoid

conflicts which might eventually terminate in fratricidal war, like that which for the last year past has been desolating three republics of the Pacific, and which we ought to endeavor to avoid by every means consistent with the national honor.

From the correspondence which has passed between the legation and the American Government, it will be seen that the relations between the two countries have been maintained upon the best footing, notwithstanding the situation certainly at times disturbed, which the publications of the official press created for me for a short period with respect to the enterprise of the Interoceanic Canal of Panama, and the manifest tendencies of the United States Government to, in my opninion, exercise a galling superintendence over all the interoceanic routes, derogatory to the sovereignty of Colombia. Nevertheless, by means of my official correspondence, as well as private conferences with the Hon. Mr. Evarts, Secretary of State, I have endeavored, and, in fact, have obtained, in my opinion, a plan to conciliate the defense of the rights and sovereignty of Colombia with the good understanding recommended, calculated to promote rather than retard a convenient solution of the important negotiations to which the instructions refer.

The points 2, 3, 4, and 5 apply to the convention made in this city with the representative of the Government of Chili respecting the conservation of peace between the two Republics; to the circular communicated in consequence by the Government of Colombia to the republican Governments of South America, inviting them to send representatives to Panama in the month of September next, to form part of that convention and observe the method observed for the discussion and adoption of the bases for a complete code of international law for South America.

At first upon reading the convention made with the representative of the Government of Chili about arbitrations, I observed that this document was wanting in the approbation of both countries, and communicated the fact to you in my note of the 18th November ultimo, No. 12, wherein I notified the Government of my intention to limit myself, for the moment, to sounding the President of the United States, Mr. Hayes, at the same time disclosing to him my opinion that perhaps it might be as well to reform the convention so as to have two or three chiefs of friendly nations instead of one only, from amongst whom, in case of necessity, an umpire might be selected.

After delivering the above-mentioned note, I held several conferences upon the subject with Mr. Evarts, who always manifested the best disposition on the part of his Government to accept the honorable office of umpire, excepting only the case when the nature of its relations with any of the countries interested might not permit it to decide with the necessary impartiality due to a careful study of the point or points in dispute. At the same time he expressed the interest which his Government would take in persuading the representatives of the South American Republics to meet in Panama those of our Republic. Of all these matters I gave due notice to the Government in various official communications.

The sixth point says:

The Government of the United States being bound by a treaty still in force to maintain the neutrality of the State of Panama, and guarantee the integrity of the same, you will endeavor to find out what the Secretary of State understands by the term neutrality, and how far the said guarantee may be made to extend. This point might become of importance in case the Republic of Chili should claim indemnification from Colombia for the transport of arms across the Isthmus of Panama. This

traffic, with but few exceptions, has been carried on by the agents of the Panama Railroad and other American citizens, the fact being that all the arms conveyed across the isthmus were for the use of the belligerents of the Pacific, besides being manufactured and sold by citizens of the United States.

The protocol of the 17th February ultimo will show how I complied with this clause of the instructions. Bearing in mind the complaints of Chili on account of the transport of arms across the Isthmus of Panama, it appeared to me that I ought to leave this point untouched, inasmuch as it would have placed us in an awkward situation with respect to the American Government, as the asking for such an avowal might be interpreted disadvantageously for us, if made precisely at a moment when our relations with the Government of Chili, either with or without reason, were not on the best footing.

It was consequently natural to await the discussion which had already been provoked relating to the opening of the canal, in order to examine that article of the instructions to which I am about to refer.

The seventh, or last, of the instructions given to me by the Government is to the following effect:

(For this, vide II, page 378, *ante.*)

In the examination of this cause, which is the basis of the protocol of the 17th February, already submitted to the consideration of the citizen President of the Republic, I will endeavor to explain in detail all the circumstances that have occurred and the notes which have been exchanged in relation thereto, in order that the Government may form a correct idea of what the United States hope to obtain from the legation in my charge, and what the latter got in turn from the cabinet of Washington. The project of the protocol drawn up by my predecessor, the illustrious Señor Don Justo Arosemena, which, according to the clause copied, ought to serve me as a guide for initiating the amplification of the treaty of 1846, still in force between the two countries, says as follows:

(Vide page 376, *ante.*)

After studying carefully the spirit of the preceding document, I solicited private interviews with the Secretary of State, for the purpose of discussing a plan convenient for both nations for extending the treaty of 1846, and after two or three conferences we agreed upon presenting in character of confidential, the bases we judged to be suitable for the desired amplification.

Upon the day appointed I went to the Department of State, and placed in the hands of Mr. Evarts the annexed project of treaty, the basis of which, with certain additions favorable to Colombia, are identical with those of the project of the Hon. Sr. Arosemena. I ought here to confess that without a full confidence in my own inspirations in regard to the fulfillment of my duty, it would have sufficed to determine me to accept the opinions of Dr. Arosemena the respect which I have always entertained for his competency and honor. The project says as follows:

(Vide page 361, *ante.*)

Two days afterwards Mr. Evarts submitted to my examination the "counter project," the true translation of which I copy, and to which, Mr. Secretary, I desire most particularly to direct your attention.

(Vide page 364, *ante.*)

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From article 1 of the foregoing "counter project" the fact may be inferred that the American Government has at last determined to disclose its pretension to revise the concession made by Colombia in favor of Mr. Lucien N. B. Wyse, or any other enterprise having for its object the opening of an interoceanic canal through Colombian territory. This pretension I could not allow without humiliating the sovereignty of the nation I represented. For the purpose, therefore, of convincing the American Government that it was out of the question to hope that Colombia would consent to such an act of abdication, I addressed to him a note dated the 10th of February, of which I annex a copy:

General Santo Domingo to Mr. Evarts.

LEGATION OF COLOMBIA AT WASHINGTON,
Willard's Hotel, Washington, February 10, 1881.

SIR: The undersigned, minister of Colombia, has read and examined, with all the interest which the subject demands, the bases confidentially handed to him by his excellency the Secretary of State during their interview of yesterday for the discussion of the proposed amplification of the treaty of 1845, which is now in force between Colombia and the United States of America, which bases were proposed after his excellency read the draft which was likewise confidentially placed in his hands by the undersigned minister previously to his recent departure for New York.

As frankness and sincerity in its foreign relations are the unvarying guides of the Government which he represents, the undersigned minister deems it likewise his duty to be governed by them; he will therefore proceed to state his opinions without reservation of any kind.

When the undersigned minister confidentially handed a statement of the views of the Government of Colombia, in the form of a draft of a treaty, to his excellency the Secretary of State, he referred solely, as is shown by the contents of said draft, to the manner in which the United States of America, as allies of Colombia, were to contribute to the fulfillment of the engagements contracted by said treaty; he did not even imagine that the enlightened American Government proposed to discuss the right of Colombia, as an independent and sovereign nation, to conclude conventions of the nature of that which she has concluded with Mr. Lucien N. B. Wyse for the construction of an interoceanic canal through her own territory.

Although the "whereas" of the draft presented to him are based upon the very obligations contracted by the Government of the United States of America in article 35 of the aforesaid treaty of 1846, that is to say, upon obligations designed to guarantee the sovereignty of Colombia over the Isthmus of Panama, article 1 of the draft prepared by his excellency the Secretary of State is, in the opinion of the undersigned, in direct derogation of the very sovereignty which it is proposed to guarantee, when it proposes to Colombia to agree that before granting a privilege similar to that which it has granted it needs to secure the consent and approval of a foreign power. Still more is this the case when, as in this instance, that proposition refers to a privilege already granted after all the formalities required by the institutions and laws of Colombia have been complied with, which having been done, the faith of the nation is solemnly pledged.

The undersigned minister has already had occasion to inform his excellency the Secretary of State that the Government of Colombia adheres, without reserve, to the Monroe doctrine; it does not think, however, that that doctrine can be enforced in the present case without disregarding the fraternal idea which constitutes its essence.

If his excellency thinks, therefore, that the idea contained in article 1 of the draft, which he has been pleased to submit to the consideration of the undersigned, is an indispensable preliminary on the part of the American Government to the discussion of the amplification of the treaty of 1846, which is now in force between Colombia and the United States of America, the undersigned minister is sorry to inform his excellency that without fresh instructions from his Government he can not accept that idea as a basis of discussion; and that as he is about to return to his country his Government may, when informed of the opinions of the enlightened Government of which his excellency forms a part, give the proper authorization to its representative at this capital.

The undersigned minister desires this note to be considered as possessing the same confidential character as the interviews which he has had in relation to this matter, and he avails himself of this occasion to reiterate to his excellency the assurance of his high esteem and personal consideration.

R. STO. DOMINGO VILA.

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The precise terms of my refusal to admit a discussion upon such bases undoubtedly decided the Secretary of State to propose that we should set aside the discussion of article 1, to which my former note referred, if, in my opinion and in accordance with terms of my note, the proposition should attack the sovereignty. At the same time he manifested his wish to discuss the articles following the counter-projects already mentioned.

In a confidential interview I endeavored in the first place to show clearly the contradictory tendencies of the project of the treaty presented by me, and those of the counter-project which in his turn the Secretary of State had submitted to my consideration.

The following were my observations:

TENDENCIES OF THE PROJECT PRESENTED BY THE COLOMBIAN MINISTER.

1st. To admit that the excavation of a canal across the Isthmus of Panama might seriously augment the obligations contracted by the United States of America, in accordance with article 35 of the treaty of 1846, still in force between the two nations, and to manifest the willingness of Colombia to facilitate the fulfillment of the said obligations.

2d. To determine the limits of the territory embraced by the guarantee of sovereignty, and the neutrality of the interoceanic route.

3d. To define the facts and cases which might oblige the United States of America to join with Colombia to defend the territory guaranteed.

4th. To determine the facilities which Colombia might be disposed to afford to the United States to enable it to comply with the obligations it has undertaken, and, amongst others, that of the two Governments mutually designating the places which require permanent or provisional fortifications. Those also that may be suitable for coal depots for the use of vessels of both nations. The occupation of any territory which may be menaced or invaded, so long as the emergency lasts, and the free transit of the canal by the American naval forces.

TENDENCIES OF THE COUNTER PROJECT PRESENTED BY THE SECRETARY OF STATE.

1st. Article 1 will completely annul the sovereignty of Colombia.

2d. Article 2 tends to modify article 6 of the convention Salgar-Wyse.

3d. Article 3 is based upon the idea of fortifying and occupying permanently the canal and its appurtenances by forces of the United States of America.

4th. Articles 4 and 5 point to a modification of article 5 of the convention Salgar-Wyse.

From the above comparison it may be clearly deduced that articles 2, 4, and 5 of the Secretary of State's project are affected with the same inconvenience as article 1, the discussion of which was set aside, because the undersigned did not feel himself authorized even to accept it as a basis of discussion.

With regard to article 3 of the Secretary of State's project, the undersigned takes the liberty of observing that if the fortification of the territory in question must be executed before the occurrence of the danger against which it may be desired to guard, he fails to see that the permanent occupation of the territory guaranteed by United States troops should be indispensable, because in case of necessity

Colombia would maintain a sufficient armed force on the isthmus to defend the canal against a sudden attack, thereby giving time to the United States to come to her succor.

Being again urged by the Secretary of State to continue the discussion upon the basis of this counter project, which I had already definitively rejected, I wrote to him on the 11th February the following note:

General Santo Domingo to Mr. Evarts.

LEGATION OF COLOMBIA AT WASHINGTON,
Washington, February 11, 1881.

SIR: Although the time which is at the disposal of the undersigned minister in this capital is very short, he hastens to reply to the note of the Department of State bearing date of yesterday and referring to his of the same day.

The undersigned is sorry not to have succeeded in conveying to his excellency's mind the idea which he had in view when he dictated it, viz, that inasmuch as the draft which was submitted to his consideration is based upon its first article, and as the undersigned minister interprets it as not being in harmony with the sovereignty of the country which he represents, he has thought that, without fresh instructions from his Government, he can not continue the discussion touching so important and grave a matter, since the Government of Colombia could not foresee, when it gave him his instructions for his present mission, the possibility that, when the amplification of the treaty of 1846 should be considered, with a view to specifying the manner and providing the means for the fulfillment of the obligations contracted by the American Government in connection with the guarantee of the sovereignty of Colombia over the Isthmus of Panama, it should be sought, even remotely, to jeopardize, or even to call into question, its national sovereignty, as, in the opinion of the undersigned, it would be jeopardized if he were to accept as a basis of the discussion of a treaty anything similar to what is contained in article 1 of the draft prepared by his excellency, to which the undersigned now has reference.

Being without instructions, therefore, for this unforeseen case, and being obliged to return to Colombia with as little delay as possible, the undersigned will take occasion to inform his Government, in person, of the views and wishes of the executive branch of the American Government, in relation to the treaty of 1846, which is now in force between Colombia and the United States of America, and to transmit it via the Isthmus of Panama.

In case, moreover, the American Government shall not think proper to authorize its minister at Bogota to continue the negotations there, the undersigned will, ere long, return to Washington; or, if not, an other agent of the Government of Colombia will soon be accredited; and the undersigned hopes that, when the discussion of this important question shall be reopened, the mutually advantageous result will be attained which is desired by both Governments, and which the undersigned most sincerely regrets not to have been able, thus far, to bring about.

The undersigned will, nevertheless, be glad to visit the Department of State this afternoon at three o'clock, if his excellency the Secretary of State has no previous engagement, and he will be still more glad, on taking his leave for the time being, once more to hear the assurances of the fraternal feelings entertained by the great American nation towards its sisters on this continent.

The undersigned reiterates to his excellency the Secretary of State the assurances of his respect and consideration.

R. STO. DOMINGO VILA.

Having accepted the interview solicited at the end of the foregoing dispatch, I was again requested by the Secretary to delay my return to New York, with the hope, as he expressed it, that we might be able to arrive at an arrangement acceptable to both parties; but as the Secretary refused to fix the terms of the proposed arrangement, I informed him of my determination to go to New York with the intention of sailing in the steamer of the 18th instant.

The negotiation being in this state, and, as one may say, suspended, on the 15th of February I received a telegram from Mr. Evarts informing me that he had sent Mr. Trescot, who, as representing the Department of State, was invested with power to continue the negotiation.

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The discussion having been resumed in the manner explained, and finding the representative better inclined to recognize the justice of my rejection of the basis which had been proposed, I repeated the substance of my first project, and not having time to draw up a treaty, which might contain and develop them, I agreed to sign the protocol, of which I have given an account, and which, as may be deduced from its context, is confined to making important declarations relating to the treaty, still in force, of the 12th of December, 1846, between Colombia and the United States of America.

After relating the condition of the negotiation, which has resulted in the protocol of the 17th of February of the present year, the original of which I have handed to the secretary of foreign affairs, I will now proceed to show the meaning that, in my opinion, should be attached to the declarations contained in said protocol.

A mere perusal of the conteur project presented by the Hon. Mr. Evarts will show the exact measure of the demands which are meditated against Colombia, and evident intention that exists of upsetting the organization of the company holding the concession made in favor of Mr. Lucien N. B. Wyse, through the humbug of a simulated superintendence by the American Government over all interoceanic communications across the Isthmus of Panama, in accordance with the views already proclaimed by the American press, which have also been advocated even in the chambers of the national representation.

In order to justify its designs, the American Government has been compelled to invoke the Monroe doctrine, in spite of its being inapplicable to the case, and to interpret article 35 of the treaty of 1846, &c., as creating a right to interfere in matters which affect the sovereignty of Colombia. This article, so far from conceding to the United States the right claimed, imposes obligations upon that Government which Colombia stipulated for as a compensation for the concessions made in the first part of the said article 35 to the United States.

Planting itself in this way upon a forced interpretation of article 35 of the treaty of 1846, before cited, the United States deny the right of Colombia to grant concessions of the kind made in favor of Mr. L. N. B. Wyse, without the previous approbation of the American Government.

It is necessary to study with attention the protocol of the 17th February, in order to discover whether or not the minister of Colombia induced the Cabinet of Washington to desist from such a pretension, and in consequence the perfect right of Colombia to make the law authorizing the excavation of a canal through her own territory.

After studying separately each of the points to which the protocol refers, and examining the terms and making the necessary comparison between that document and the treaty of 1846, basis of the aforesaid protocol, it will be admitted that the real object of the Colombian minister was to extract from the American Government two important declarations, calculated to include the recognition, as a fact legally consummated, of the contract Salgar-Wyse, and Colombia's right to seek from other powers a guarantee similar to that which the United States have bound themselves to make effective.

It will likewise be admitted that these declarations were obtained without any new concession of a definite character on the part of the representative of Colombia; *i. e.*, none that were not contained in the treaty of 1846, and much less any that might be considered not included

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in the instructions which were delivered to him as a guide, and invested him with authority to sign the documents which it is now proposed to examine.

The first article of the protocol is confined to the recognition of the fact that by article 35 of the treaty of 1846, &c., all interoceanic communication across the isthmus shall be free equally for the Government and citizens of both nations, saving the exception provided for in the protocol, which is not in the treaty, of the case of war between the two nations.

Article 2 declares the consent of the two nations to be necessary for the erection of temporary or permanent works and the establishment of convenient sites therefor. The same with respect to naval stations, dockyards, and coal depots.

Besides the above, *ulterior conventions* will be required to arrange and attend to the maintenance of the aforesaid establishments.

Colombia, therefore, in the before-mentioned declaration has compromised herself to nothing, no time having been fixed for the construction of any defensive work in her territory, nor can any be constructed without her express consent, the occasion for conceding or denying not having occurred. In the meantime it is expressly stipulated in the said article 2 that until the danger provided for in article 35 of the treaty of 1846 shall become apparent no military force, except it belong to the army of Colombia, shall be stationed in the territory of the Isthmus.

Remembering the fact already proved that the Colombian minister decidedly and energetically refused all discussion upon the basis of conceding to the United States of America the right to modify the contract Salgar-Wyse, it will be comprehended that when he accepted in article 3 the concurrence of the American Government for fixing the tariff only in the case in which Colombia might consider herself justified in intervening in the regulations *either dictated* or which may be dictated..... by whom? *by the company which owns the concession*, it is proposed to compel the American Government to recognize this company, whose existing contract with Colombia was the obstacle which prevented it from considering itself at present possessed of the right to interfere with the regulations adopted.

This important recognition was obtained merely at the cost that Colombia should accept the concurrence of the United States for the execution of an act which will not take place, or for the exercise of a right that Colombia will not be able to recover, except in case of the expiration of the existing contract—a contract whose revision is claimed by the American Government.

The fourth article says:

(*Vide* page 375, *ante*.)

No great effort of the imagination is required to discover that the intention of the Colombian minister in drafting that part of the article of the protocol just copied was to determine the possibility that by treaty other powers might also take part in guaranteeing the neutrality of the interoceanic route and the sovereignty of Colombia over its own territory, thereby inducing these powers to hasten the celebration of the said treaties with the bait of concessions made to the United States, this up to the *present time* having been the only nation that had offered

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her guarantee, and *this same constituting the foundation of all the concessions hitherto granted.*

It may consequently be deduced from the foregoing that article 4 was designed to secure for Colombia a collective guarantee from all the maritime powers, this being the only one that can satisfy the necessities of universal commerce, besides avoiding the conflicts that an isolated guarantee might maintain pending, like the sword of Damocles, not only over the sovereignty of Colombia, but also over the head of the entire commercial world.

In this manner I have analyzed each of the points contained in the protocol of the 17th of February, 1881, which it has been my fate to sign. In so doing I feel myself honored, in spite of having been informed that voices have been raised in terms of disapprobation both in and outside the Senate, even to the extent of denouncing my conduct as an act of treason towards the Republic. Those persons who censure me in this way will not be the only ones whom I have been called upon to forgive. The hour of real danger for this country will be the proper time for branding the true traitors. May my accusers in my presence never have occasion to hang their heads with shame!

CONCLUSION.

The secretary for foreign affairs will permit me to repeat the opin ion that from New York I urged upon the Government of Colombia the advantage of promoting actively amongst the maritime nations of the world the idea of a collective guarantee. According to my view this measure is the only one calculated to secure effectively the rights and sovereignty of Colombia over the Isthmus, at the same time that it will maintain the neutrality of the interoceanic route, a matter in which the principles of universal commerce are interested.

It is to the obtainment of this collective guarantee that, in my humble opinion, the patriotic efforts of Colombia should be directed with all due caution, talent, tenacity, and constancy through her legations.

If the patriotic interest which I have dedicated to the discharge of the honorable mission that the Government of Colombia confided to me in the United States of America should eventually be recognized, together with my firm intention to adhere strictly to the tenor of the instructions delivered to me, and which served me as a guide during the negotiations of which I have just given a detailed account, I shall consider my labors fully recompensed.

R. SANTODOMINGO VILA.

Señor SECRETARIO.

V.

THE MONROE DOCTRINE.

President Monroe, in his message to Congress in 1823, after stating that friendly negotiations were in progress with Russia and England to clearly define the respective rights of these powers on the northeast coast of America, expressed himself in the following terms:

"During the discussions that have taken place about the arrangement of this business it has been judged a proper occasion to affirm,

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as a principle of national interest, that the continent of America, in virtue of the liberty and independence that it has conquered, ought to be considered as free from all intention of future colonization on the part of European powers."*

VI.

OFFICE OF FOREIGN AFFAIRS,
Bogotá, May 28, 1881.

A communication having been made to the honorable Senate of the Union that the executive power, without declining to appreciate as patriotic and well intentioned the conduct of our minister in Washington, has declared the bases of the protocol of the 17th February to be inacceptable in a general point of view, and in consequence has given to the negotiations the turn corresponding to such decision.

This resolution ends for the present the important business to which the documents published this day refer.

The Secretary:

BECERRA.

Mr. Blaine to Mr. Maney.

No. 3.] DEPARTMENT OF STATE,
Washington, July 25, 1881.

SIR: I forward herewith, for your information, a copy of my instruction to Mr. James R. Lowell, United States minister at London, of the 24th ultimo, relative to an interoceanic canal across the Isthmus of Panama.

A similar instruction was also addressed to the representatives of this Government accredited to the several European governments.

I am, &c.,

JAMES G. BLAINE.

[Inclosure in No. 3.]

Mr. Blaine to Mr. Lowell.

No. 187.] DEPARTMENT OF STATE,
Washington, June 24, 1881.

SIR: It has fallen under the observation of the President, through the current statements of the European press and other usual channels of communication, that the great powers of Europe may possibly be considering the subject of jointly guaranteeing the neutrality of the interoceanic canal now projected across the Isthmus of Panama.

The United States recognizes a proper guarantee of neutrality as essential to the construction and successful operation of any highway across the Isthmus of Panama, and in the last generation every step was taken by this Government that is deemed requisite in the premises. The necessity was foreseen and abundantly provided for long in advance of any possible call for the actual exercise of power.

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* MEMORANDUM.—The above is a Colombian version of the Monroe doctrine, which, of course, does not exactly correspond with the language used by President Monroe.

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In 1846 a memorable and important treaty was negotiated and signed between the United States of America and the Republic of New Granada, now the United States of Colombia. By the thirty-fifth article of that treaty, in exchange for certain concessions made to the United States we guaranteed "positively and efficaciously" the perfect neutrality of the Isthmus and of any interoceanic communications that might be constructed upon or over it for the maintenance of free transit from sea to sea; and we also guaranteed the rights of sovereignty and property of the United States of Colombia over the territory of the Isthmus as included within the borders of the State of Panama.

In the judgment of the President this guarantee, given by the United States of America, does not require reenforcement, or accession, or assent from any other power. In more than one instance this Government has been called upon to vindicate the neutrality thus guaranteed, and there is no contingency now foreseen or apprehended in which such vindication would not be within the power of this nation.

There has never been the slightest doubt on the part of the United States as to the purpose or extent of the obligation then assumed, by which it became surety alike for the free transit of the world's commerce over whatever landway or waterway might be opened from sea to sea, and for the protection of the territorial rights of Colombia from aggression or interference of any kind. Nor has there ever been room to question the full extent of the advantages and benefits, naturally due to its geographical position and political relations on the Western Continent, which the United States obtained from the owner of the isthmian territory in exchange for that far-reaching and responsible guarantee.

If the foreshadowed action of the European powers should assume tangible shape, it would be well for you to bring to the notice of Lord Granville the provisions of the treaty of 1846, and especially of its thirty-fifth article, and to intimate to him that any movement in the sense of supplementing the guarantee contained therein would necessarily be regarded by this Government as an uncalled-for intrusion into a field where the local and general interests of the United States of America must be considered before those of any other power save those of the United States of Colombia alone, which has already derived and will continue to derive such eminent advantages from the guarantee of this Government.

The President deems it due to frankness to be still more explicit on this subject, and to elucidate the views of the United States Government with somewhat of detail to the end that no uncertainty shall subsist as to the integrity of our motives or the distinctness of our aims.

It is not the wish or the purpose of the United States to interfere with any commercial enterprise in which the citizens or subjects of any foreign power may see fit to embark under a lawful privilege. The fact of the stock and franchises of the Panama Canal or the Panama Railway being owned in Europe, either in whole or principally, is no more a subject of complaint on the part of the United States than is the circumstance that the stock of many of its own great lines of railway is largely held abroad. Such ownership, with its attendant rights, is in the United States amply secured by the laws of the land, and on the

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Isthmus is doubly secured by the local laws of Colombia, under the superior guarantee of the United States.

Nor, in time of peace, does the United States seek to have any exclusive privileges accorded to American ships in respect to precedence or tolls through an interoceanic canal any more than it has sought like privileges for American goods in transit over the Panama Railway, under the exclusive control of an American corporation. The extent of the privileges of American citizens and ships is measurable under the treaty of 1846 by those of Colombian citizens and ships. It would be our earnest desire and expectation to see the world's peaceful commerce enjoy the same just, liberal, and rational treatment.

It is as regards the political control of such a canal, as distinguished from its merely administrative or commercial regulation, that the President feels called upon to speak with directness and with emphasis. During any war to which the United States of America or the United States of Colombia might be a party, the passage of armed vessels of a hostile nation through the canal of Panama would be no more admissible than would the passage of the armed forces of a hostile nation over the railway lines joining the Atlantic and Pacific shores of the United States or of Colombia. And the United States of America will insist upon her right to take all needful precautions against the possibility of the Isthmus transit being in any event used offensively against her interests upon the land or upon the sea.

The two Republics between which the guarantee of neutrality and possession exists have analogous conditions with respect to their territorial extension. Both have a long line of coast on either ocean to protect as well as to improve. The possessions of the United States upon the Pacific coast are imperial in extent and of extraordinary growth. Even at their present stage of development they would supply the larger part of the traffic which would seek the advantages of the canal. The States of California and Oregon, and the Territory of Washington, larger in area than England and France, produce for export more than a ton of wheat for each inhabitant, and the entire freights demanding water transportation eastward, already enormous, are augmenting each year with an accelerating ratio. While the population and products of the Pacific slope are thus increasing upon a vast scale, the railway system connecting the Gulf of Mexico with the interior and with the Great Lakes is being rapidly extended, thus affording additional facilities for enlarging the commerce that must seek the coast line to the Pacific of which the projected canal at Panama will form a part, and be as truly a channel of communication between the Eastern and far Western States as our own transcontinental railways. It is the perception of this domestic function of the long-sought waterway between the two seas that border the Republic which has caused the project to be regarded as of vital importance by this Government. The history of the enterprise is marked from the outset by the numerous expeditions which have from time to time been sent out by the United States at large expense to explore the various routes, and thus facilitate the work when the time should be ripe and the vast capital be forthcoming for the undertaking.

If the proposed canal were a channel of communication near to the countries of the Old World, and employed wholly, or almost wholly, by their commerce, it might very properly be urged that the influence of the European powers should be commensurate with their interests.

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With the exercise of such influence the United States could find no fault, especially if assured of equal participation in the peaceable enjoyment of the commercial facilities so afforded. The case, however, is here reversed, and an agreement between European States to jointly guarantee the neutrality and in effect control the political character of a highway of commerce, remote from them and near to us, forming substantially a part of our coast line and promising to become the chief means of transportation between our Atlantic and Pacific States, would be viewed by this Government with the gravest concern.

The policy of the United States is one of peace and friendly intercourse with every government and people. This disposition is frankly avowed, and is, moreover, abundantly shown in the fact that our armaments by land and sea are kept within such limits as to afford no ground for distrust or suspicion of menace to other nations. The guarantee entered into by this Government in 1846 was manifestly in the interest of peace, and the necessity imposed by circumstances upon the United States of America to watch over a highway between its two coasts was so imperative that the resultant guarantee was the simplest justice to the chief interests concerned. Any attempt to supersede that guarantee by an agreement between European powers, which maintain vast armies and patrol the sea with immense fleets, and whose interest in the canal and its operation can never be so vital and supreme as ours, would partake of the nature of an alliance against the United States and would be regarded by this Government as an indication of unfriendly feeling. It would be but an inadequate response to the good will we bear them and to our cheerful and constant recognition of their own rights of domestic policy, as well as those resulting from proximity or springing from neighborly interest.

The great European powers have repeatedly united in agreements such as guarantees of neutrality touching the political condition of states like Luxembourg, Belgium, Switzerland, and parts of the Orient, where the localities were adjacent or where the interests involved concerned them nearly and deeply. Recognizing these facts, the United States has never offered to take part in such agreements or to make any agreements supplementary to them.

While thus observing the strictest neutrality with respect to complications abroad, it is the long-settled conviction of this Government that any extension to our shores of the political system by which the great powers have controlled and determined events in Europe would be attended with danger to the peace and welfare of this nation.

While the Government of the United States has no intention of initiating any discussion upon this subject, it is proper that you should be prepared, in case of concerted action or conference or exchange of opinions thereon between the great powers of Europe, to communicate to the Government to which you are accredited the views of the President as frankly and as fully as they are herein set forth. And at suitable times in your personal and friendly intercourse with your colleagues of the diplomatic body at London, you may find it proper to give discreet expression to the policy and motives of your Government in the premises.

You will be careful, in any conversations you may have, not to represent the position of the United States as the development of a new policy or the inauguration of any advanced, aggressive steps to be taken by this Government. It is nothing more than the pronounced

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adherence of the United States to principles long since enunciated by the highest authority of the Government, and now, in the judgment of the President, firmly inwoven as an integral and important part of our national policy.

In his address upon taking the oath of office the President distinctly proclaimed the position which the Government of the United States would hold upon this question, and if the European cabinets have failed to observe or give due heed to the declarations then made, it may be well for you on some proper occasion to call the attention of the minister of foreign affairs to the language used by the President.

I am, &c.,

JAMES G. BLAINE.

Sent *mutatis mutandis* to United States ministers in Europe.

Mr. Scruggs to Mr. Frelinghuysen.

No. 80.] UNITED STATES LEGATION,
Bogota, April 9, 1883. (Received May 31.)

SIR: I send you, under separate cover, by this mail a copy of the report by the Colombian minister for foreign affairs to the President of the Republic, and submitted to the Congress of 1883. You will observe, however, that this report, although published only a few days ago, was prepared by the late minister, Dr. Quijano Wallis, who resigned his position in the cabinet on the 21st December last, upon the occasion of the death of the late President, Dr. Zaldúa.

The most important part of this report relates to the subject of the Panama Canal, and which I have translated, as follows:

INTEROCEANIC CANAL.

The work of this important enterprise, of transcendent importance to the future of Colombia, continues without interruption under the direction of the illustrious M. De Lesseps.

The canal company has bought nearly all the shares in the Panama Railway enterprise, and as, according to De Lesseps' report, made in June last to the assembly of shareholders, the American law gives the most entensive powers to the majority of share owners in a corporate society, the canal company, in virtue of these powers, now becoming the substitute for the railway companies with respect to its obligations. Acting mainly upon this consideration, this department directed the extensive note to the Senate already known to you, touching the rights of Colombia in virtue of the indemnification provided for by existing contracts in case the canal should cross the privileged territory of the railway.

That note was favorably received by the Liberal press of all shades of opinion, and was finally supported by the Panama Star, one of the most respectable periodicals in South America. It was afterwards reproduced with approval by the Spanish American, a notable periodical publication of Paris. I call your attention to this subject to the end that you may be pleased to bring it before Congress at its next session for a definite decision.

The importance of Colombia as an international entity has greatly increased with the near realization of the Panama Canal. All the American nations, and those of western Europe that are the most civilized and powerful, have a direct interest in this enterprise. Our privileged Isthmus will become the highway of universal commerce, and the desired passage for armaments and fleets in case of international conflicts.

The most important diplomatic question that will result from the excavation of the canal will be that relating to the effective guarantee of its neutrality.

As is well known, the United States of the North celebrated with England, in 1850, a compact known as the Clayton-Bulwer treaty, by which they compromised them-

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selves with Great Britain not to occupy, fortify, colonize, nor assume dominion over any portion of Central America, and by which they consented to admit Great Britain as a co-guarantor, in any future time, of the protection of a canal through Central America.

The Cabinet at Washington has endeavored to obtain the abrogation of this compact, or at least a substantial modification of it (as was evinced by Mr. Frelinghuysen's note to Lord Granville, transmitted through Minister Lowell in May, 1882),* alleging that the stipulations in that treaty were agreed to when the United States believed the Nicaragua Canal would be constructed in virtue of the concession of 1849, and that the commercial and political circumstances have greatly changed since 1850.

It is possible that England, which, by reason of her connections with her vast oriental possessions, is one of the European nations most interested in the freedom and security of the Isthmian transit, will not abandon the rights she has acquired in the Clayton-Bulwer treaty, but that she will endeavor to have this compact kept in force.

Other European nations, and especially Spain, which have important possessions in the Antilles, have likewise an eye upon the Panama Canal. They see perils to their interests in the exclusive preponderance of the United States in the guarantee of neutrality of the Colombian Canal. In its turn, the American Union repudiates the idea of European intervention in the matters of America, and when the canal is opened, a collision of interests and of diplomatic pretensions may arise between Europe and the great Republic of America.

The Latin nations of America, especially those of the Pacific, have direct interests in the neutrality of the canal, since, in their commerce and communication with Europe, they will be obliged to pass through it.

The question, then, is one of great gravity, and although its decision may be deferred so long as the canal remains unopened, the cabinet and Congress of Colombia should begin to give it their attention, seeing that it relates to our future national welfare and to our rich patrimony in the narrow and favored Isthmus.

Recent events in Egypt, and the present condition of that nation, resulting from complications created by the Suez Canal, should ever be borne in mind by us in the consideration of diplomatic questions connected with the Panama Canal.

If Colombia were a strong nation, a military and maritime power of the first order, with great armies, copious resources, fortifications, and naval squadrons, all questions relating to the neutrality of the canal would lose their gravity, and we could, in the exercise of our full and legitimate sovereignty over the territory of the Isthmus traversed by the canal, insure the absolute freedom of transit to the commerce of the world in time of peace, and its complete and universal neutrality in case of war, we being the only guarantors of this freedom and neutrality.

But since, unfortunately, this is not the case, my opinion is that, in so far as the interoceanic canal relates to political questions, the Legislature and cabinet of Colombia should ever bear in mind the following considerations, namely:

1. That our sovereignty over the Isthmus is full, legitimate, and complete, and that therefore Colombia alone has the right to look for and determine the necessary guarantees of the freedom and neutrality of the canal;

2. That in our very weakness lies our strength by reason of the right which assists us; and that their own interests and welfare will naturally constrain the great nations to respect our own;

3. That the best guarantee to other nations for the fulfillment of our obligations is the fact that we are not a first-class power; and

4. That in the selection of means for the security of the canal, our guide, above all other considerations, should be the duty of the Colombian Government to guard the sovereignty of the nation on the Isthmus, which is the jewel of greatest price in our territory, and the elementary source of our brilliant future. Therefore, in the adoption of means for the protection of the canal, we should endeavor to separate ourselves as far as possible from the most proximate perils to our sovereignty, if we can not avoid all such perils.

That portion of the minister's report which relates to the United States exclusively will be found from page 6 to 12, inclusive. But as all the matters of importance therein treated of have been already fully reported by me to the Department, it is not deemed necessary to incorporate them in this dispatch.

I have, &c.,

WILLIAM L. SCRUGGS.

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* Printed in Foreign Relations for 1882.

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Mr. Becerra to Mr. Bayard.

[Translation.]

LEGATION OF COLOMBIA AT WASHINGTON,
Washington, April 2, 1885. (Received April 2.)

SIR: The Colombian State of Panama, across whose territory exists a railway which brings the two oceans into communication, and where at the present time there is being excavated a canal which will unite their waters, is ruled by its own local institutions, and obeys a government whose magistrates are elected by the vote of its citizens. In conformity with the political constitution of the Colombian nation, to which that State belongs and of which it is an integral part, its government yields obedience to and supports the action of the National Government which holds its seat at Bogota in all matters having regard to foreign relations, to international commerce, to public instruction, to the army, to the collection of the general taxes, and to the security of persons and property.

Until 1880 the autonomous rights of the State of Panama, like those of the other States of the union, extended to the exclusion of all intervention of the federal Government in the armed contests of the citizens of a State against its authorities; but in 1881 a law of the federal Congress, explanatory of the constitution, imposed upon the national Government, that is to say, upon its executive department, the duty of defending the existence and the tranquil operation of the legal governments of the States against hostile attacks on the part of domestic factions. It may be affirmed that this fundamental innovation upon the Colombian political system was in a great measure effected for the purpose of rendering more efficient and assured than theretofore the national intervention for the protection of the great commercial interests established on the Isthmus, and of the enterprises which, like that of the canal now in process of construction, promise to vastly develop those interests for the benefit of civilized peoples.

And, in fact, in the execution of that important law, the central Government established at Bogota gave paramount attention to the military service of the Isthmus, raising the number of its several garrisons to a thousand men, all veterans, endowing them with the best armament and equipment, and intrusting their command to officers of known capacity whose appointment was confirmed by the Senate.

Thanks to this special system of defense and precaution, there was no recurrence in the State of the slight but always prejudicial disturbances which in former years had obstructed its progress; the persons and property of natives and foreigners enjoyed the highest possible degree of security; and even the enormous body of laborers employed in the works of the canal, reaching in number some 15,000 men, many of them of the lowest moral condition, has scarcely made itself felt, watched over as it has been and in many cases repressed in its excesses by the soldiery of the national garrisons. This satisfactory state of things lasted until the beginning of the month of March of this year, when, unfortunately, there began to be felt upon the Isthmus the deplorable consequences of the powerful rebellion which had occurred in the interior of the Republic and in the populous State of Cauca, which adjoins that of Panama; a rebellion which had its origin in questions of constitutional reform, and proposed as its object to perturb this reform and to overthrow from power the legal magis-

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trates of the nation. In order to repress and suppress it in time, it became necessary to concentrate all the military forces of the union, and among them those which were doing garrison service in Panama and Colon, a large part of which were removed, although merely as a provisional measure, to the States of Bolivar, upon the Caribbean Sea, and Cauca, upon the Pacific.

The most important points of the Isthmus being thus left ungarrisoned in a way that was almost reckless, it was difficult, if not impossible, for its local government to immediately organize the militia force, and to this was added the adverse circumstance of being relatively distant from the centers of purely national population, such as are the provinces of Chiriqui and Veraguas, in which it was possible to enlist soldiers or levy a conscription in conformity with the law. In Panama and Colon, whose most active population is either cosmopolitan, or, as in the case of the workmen upon the canal, exempt from all military service, in pursuance of the liberal concessions of the Colombian Government, and where, moreover, the attractions of excessive commercial gain relax to a certain extent the ties of citizenship, such an organization of forces needs time, demands expense, and in no case can be the work of the moment.

Meanwhile, in these same cities of Panama and Colon there are unfortunately not wanting those professional politicians who are in all countries the pest of modern democracies, partisans whose noxious agitation, curbed and kept within bounds until then by the presence of the national forces, found in their temporary removal a propitious opportunity to devote themselves to their natural machinations.

It thus becomes clear how that, notwithstanding that there was at the head of the Government, through legal election by the assembly of the State, one of its most distinguished sons, and notwithstanding the intrinsic excellence and the patriotism of all his public acts, and in spite of this same citizen professing the dominant political opinions of the State, those professional agitators, and in their shadow many criminals of diverse nationalities and origin, conspired against the public peace and order, and at last succeeded in an evil hour in seizing, without resistance, the city of Colon and making a sanguinary attack upon that of Panama.

Thus also are explained the horrible excesses, unprecedented in the political history of Colombia, to which, according to the news furnished by the press, those soulless agitators have abandoned themselves during these last few days, and among which are certainly not the least deserving of chastisement and deplorable the imprisonment of the American consul and of an officer of the Navy of this country, notwithstanding the sentiments of constant amity and respect which have ever been entertained by the people of Colombia and all those of its citizens who have exercised or may exercise therein any power or authority toward this Republic, and toward its officers and agents of whatever rank.

Two other circumstances should be here mentioned, in order that this communication, which is a sort of memorandum, may produce the results which he who has the honor to present it to the consideration and judgment of the honorable Secretary of State hopes for from it, and these are:

First. That notwithstanding the straitened and painful military situation in the interior of the country, there nevertheless remained in the

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city of Panama certain national forces, which have contended against the disturbers of the public order, although without the successful result which was to be desired.

Secondly. That in well-grounded anticipation (based upon a knowledge of men and things upon the Isthmus) of the deplorable excesses of which the city of Colon has been the theater and the victim, the writer of this communication had the honor, in a verbal conference sought to that end, to intimate clearly to the honorable Secretary of State how expedient it was, and, besides being opportune, how necessary, that sufficient American forces on board of vessels of war stationed at Panama and Colon should be there, within sight of events, ready and competent to give to the persons and property of American citizens that effective protection and shelter which, by reason of temporary but none the less effective deficiency of material force, the Colombian authorities could not afford for the time being. The honorable Secretary took a note of those intimations, and his remarks indicated his favorable reception thereof.

It follows from what has been herein set forth that Colombia, after having assured at the cost of no small sacrifices on her part the advantages of the Panama transit for the enjoyment and benefit of the interests of all mankind, after having there suppressed the national customs duties, and, as a concession toward a more expeditious and free communication, done away with even the most elementary formalities of her maritime coasting policy, and after, lastly, having contracted, without proportionate compensation, and solely in a generous spirit of association in the work of common progress, the responsibility of protecting by means of her forces the great schemes of communication from ocean to ocean and the vast interests thereto related, has done since 1849, and especially since 1880, in so far as the great purpose in view involved modification in the constitutional practices of the Government, all that has been in her power in the direction of fulfilling her pledges. Accidents in her political life, which are not to be wondered at in an incipient nation such as Colombia is, since they occur in others of secular growth, have at times prevented, as for instance in the present case, the action of her laws and her Government from being as prompt and effective as is to be desired; but these exceptions, which, as has been observed, likewise occur even under the authority of the better constituted governments of the world, afford assuredly no ground for forgetting what that Republic has done in contribution to the universal interests of civilization, to which, as an absolutely free arena, the Colombian territory of the Isthmus has been thrown open.

The present unfortunate state of things in that region will, on the other hand, not be of long continuance. The rebellion of the interior of Colombia has been overcome, and the recent submission of the coast of the State of Cauca to the authority of the national Government indicates that there will be dispatched from there, at no distant day, armed expeditions on the part of the nation, competent to restore peace upon the Isthmus and to subject to the operation of justice those who have disturbed it by attempt like that of Colon.

Entertaining the most justifiable confidence in the high circumspection and never-belied spirit of probity of the Government of the United States of America, the undersigned, envoy extraordinary and minister plenipotentiary of the United States of Colombia, has the honor to submit this note, and the details and information which it contains, to the judg-

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ment of the honorable Secretary of State, in the hope that the decision which he will reach concerning the recent deplorable events upon the Isthmus will be as fitting to the occasion as is to be desired.

The undersigned renews, &c.,

RICARDO BECERRA.

Mr. Becerra to Mr. Bayard.

[Translation.]

LEGATION OF COLOMBIA AT WASHINGTON,
Washington, April 4, 1885. (Received April 4.)

SIR: Our interview which took place yesterday, at 2 o'clock p. m., had reference to a matter of such vital importance to the interests and the honor of the people and the National Government of Colombia, which are now intrusted to my discretion and zeal, that I deem it proper, and as a matter of course, worthy of your approval, Mr. Secretary of State, that I should state in this note, and put on record therein, if not all the particulars of the interview, at least the main agreement in which it resulted, together with the considerations which suggested it on both sides. Consequently, Mr. Secretary of State, I have the honor to lay before you my recollections of that interview, begging that you will rectify, or, if you think proper, confirm them, so that we may thus place on record that exchange of sincere and ingenuous opinions whose object was the common benefit of the two countries, and which, if faithfully carried out, will establish a precedent worthy of great respect in their mutual relations.

On the day preceding the aforesaid interview I had the honor to address to you, Mr. Secretary of State, my note of that date, April 2, containing a statement of the reasons why, notwithstanding the most earnest efforts of the Colombian Government and the antecedents of many years, interoceanic transit across the Isthmus of Panama has not during the past few days been as efficiently protected as is to be desired. You began, Mr. Secretary of State, by remarking that my note was clear, intelligent, and well calculated to give a correct idea of the condition of affairs in Colombia, especially on the Isthmus. You added that the statements therein made showed that the protective action of the Colombian authorities had been either wholly wanting or very insufficient, which fact had given rise to the outrages committed in the city of Colon against the persons and property of many American citizens. The object of my note having been to explain and even to justify that insufficiency, on the ground of the exceptional nature of the circumstances, I hastened to reply that your remark was unfortunately well founded, and that I should in no case have recourse to the subterfuges so often made use of in what is called diplomacy for the purpose of distorting facts, especially as I had unlimited confidence in the uprightness of the American Government, and in the spirit of justice and equity which lies at the root of its whole present policy.

Incidental remarks then led us to the special object with which I had solicited the interview. From what had been published in the newspapers, I was aware that the United States Government was preparing to send an expedition to the Isthmus. I did not know, however, what was its object, how large it was to be, or the legal grounds on which the

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Government proposed to send it. I therefore expressed the desire which I naturally felt to be informed of these particulars, with which desire you unhesitatingly complied by informing me that several men-of-war and a few transports were, indeed, about to sail for the ports of Colon and Panama, with a sufficient force of marines to effect a landing, if necessary; that the sole object of the expedition was to reestablish railway transit between the two oceans, which you supposed to be still interrupted, and to afford shelter and protection to the many American citizens who had been rendered homeless by the burning of Colon; that the United States thus performed the duty which was rendered incumbent upon them by the treaty (still in force) concluded in 1846, wherein it is provided that they shall "prevent the free transit from the one to the other sea from being interrupted or embarrassed," and that, too, with the greater reason, inasmuch as it had been seen that the authorities of the Colombian Government, which was the first guarantor of that freedom of transit, had of late been unable to perform that duty, thereby rendering possible the commission of acts of violence and outrages against officers and citizens of this country, against which public opinion in the United States vigorously protested. I then told you that I had good reasons to assure you that free transit had already been re-established, and that the national forces which had just recaptured Colon and defended Panama would be sufficient not only to protect the transit but also to support the action of the authorities in bringing the criminals to condign punishment. I briefly explained the political condition of Colombia, and said that reenforcements for the national garrison on the Isthmus would probably soon sail, if they had not done so already, from the port of Buenaventura, which is very near to Panama. To these statements of mine you replied by formally declaring that the United States forces were to be sent to the Isthmus, in pursuance of the spontaneous action of the United States Government, solely in order that the duty might be fulfilled which is rendered incumbent upon the nation by the treaty of 1846, it being understood that if, on arriving at Colon, they should find the freedom of interoceanic transit restored, and the Colombian authorities in possession of force sufficient to furnish a guarantee that order would be maintained, the said forces would be withdrawn, as their mission would then be at an end. I then expressed the satisfaction which I felt on learning what limits were to be set to the action of the United States on the Isthmus by the exceedingly moderate and upright policy of their Government, and I promised to make a statement of that policy and of its character to the national authorities at Panama, urging them at the same time to do all in their power to strengthen themselves, in order thus to render unnecessary the intervention of the second power guaranteeing interoceanic transit, or at least to render it of very short duration. I then wrote a couple of telegrams, which you told me, in compliance with my special request, would be sent without delay by the Department of State.

In the course of the interview I took occasion to mention that I had seen with painful surprise that several New York papers reported that language which was unfriendly and even diametrically opposed to the very moderate and prudent policy of this Government had been used by the naval officers who were about proceeding to the Isthmus. You were pleased to take note of my observation, and I have seen by the dispatches of the Navy Department that the Government desires that

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there be no lack of decorum in language on the part of those who are to execute its orders. All this goes to strengthen the very great confidence with which, as the representative of the most delicate interests of my country, I have from the very outset viewed the policy and the methods of action of the American Government.

Here ends my statement of my recollections of our important interview of yesterday, which I most respectfully submit to you, Mr. Secretary, for approval or correction. I would add that the foregoing statement may be not improperly supplemented by that of my recollection of our previous interview in relation to the same subject, at which I had the honor to be accompanied by the minister of Mexico. Foreseeing, as I then did, some if not all of the painful events which have since then taken place, I hinted to you, Mr. Secretary, that it would be well if the crews of the war vessels then anchored at Panama could be ordered by the Government to lend aid to the lawful authorities of the Isthmus whenever the latter might deem it necessary for the protection of transit and of the interests of foreigners. You listened to my remarks with favor, and doubtless acted accordingly. It is not for me to inquire why the orders, which must have been given, were not executed, but I may be allowed to deplore the causes or circumstances that led to this omission, since the burning and, as is said, the total destruction of the city of Colon was thereby rendered possible.

I again offer you, &c.,

RICARDO BECERRA.

Mr. Becerra to Mr. Bayard.

[Translation.]

LEGATION OF COLOMBIA AT WASHINGTON,
Washington, April 4, 1885. (Received April 4.)

SIR: With regretful surprise and with a feeling of indignation, which I am sure the honorable Mr. Bayard, to whom I have the honor to address myself, will appreciate and respect, I have read in the morning papers the following cablegram, which, it is said, has been sent to the Department of the Navy, in Washington, by the commander of the war vessel Galena, now stationed in the waters of the port of Colon:

> I hold two of the most prominent insurgents who assisted in firing Aspinwall. I do not think it is safe to deliver them to the Colombian authorities, who would permit their escape.

There is no need for me to measure the intensity and the scope of this brutal (*sangriento*) insult, which would seem to be leveled at the people and Government of Colombia by the commander of an American war vessel; an insult which at the same time would seem to have been accepted by this Government, and given, with its sanction, to the publicity of the world.

I very respectfully call the attention of the honorable Secretary of State to this unqualifiable incident, and entertaining well-founded confidence in the spirit of good judgment and perfect decorum of which he has given so many proofs, I suggest to him the adoption of the best among the many methods which may be available to redress the insult

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inflicted upon a friendly nation, which is the more worthy of consideration the greater is the state of perturbation in which it now is by reason of accidents connected with the incipiency of its political life.

The undersigned renews, &c.,

RICARDO BECERRA.

Mr. Bayard to Mr. Becerra.

DEPARTMENT OF STATE,
Washington, April 6, 1885.

SIR: I had the honor to receive, late on the afternoon of Saturday last, the 4th instant, your note of that date, in which you are pleased to express to me the feelings of surprise, grief, and indignation with which you have seen the publication in the daily papers of a telegram from the commander of the United States steamer Galena, now at Colon, to the effect that he holds two of the most prominent of the insurgents who assisted in firing that city, and that he deemed it unsafe to deliver them to the Colombian authorities, lest they should be allowed to escape. You ask that redress be afforded for the insult which, in your judgment, Commander Kane has thus offered to the Colombian Government and people.

You do me simple justice when you intimate that I should share your surprise and grief at anything that might indicate a lack of confidence in the Colombian Government, or in its representatives, by any officer of the United States. Permit me, however, to suggest some considerations which may serve to qualify the sentiments you perhaps not unnaturally express in relation to the telegram.

While the language attributed to Commander Kane, expressed with the necessary brevity of telegraphic communication, may appear to you unpleasant, yet the time when it was written and the circumstances surrounding the writer must be justly considered before measuring the imputed offense.

It was a period of great excitement—by no means wholly allayed, be it observed—when power was changing hands almost hourly between the contending parties at Colon and along the line of the railway transit, and it was wholly uncertain who really represented the lawful Government of the United States of Colombia upon the Isthmus of Panama.

General Aizpurú, who captured Panama, was not the officer of that Government, but General Gónima, who attacked him, was such an officer. Between these two a doubtful part seems to have been played by Dr. Arosemena, the president of the State of Panama, who appears to have temporarily yielded to General Aizpurú under constraint and contingently upon the outcome of the insurrectionary attack upon Cartagena. At any rate, their actions rendered it very confusing to a third party, such as the United States naval commander, to know who represented the legitimate authority of the Colombian Government on the Isthmus. In this confusion I myself still share.

The latest dispatch received by this Government from Panama was dated April 3, and was from General Aizpurú. In that communication he assumes to speak as an authorized commander of the Government of Colombia for the whole territory of the Isthmus. Yet you informed me on the same day that General Gónima was regularly in command at Panama, and Colonel Ulloa at Colon.

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A later telegram from Commander Kane, received since your note of the 4th was delivered, speaks of the presence at Colon of a force, about one hundred in number, of troops of the Colombian Government, but without indicating whether they are acting under the orders of the regular Government commander, or obey the insurrectionary leader, General Aizpurú.

In a state of affairs so confused and confusing, Commander Kane can hardly be blamed with justice for not knowing who were the lawful authorities of the federal Government of Colombia, with which alone this Government maintains international relations; or for hesitating before giving up the two marauders who had assisted in burning the city and blocking the transit, until events had disclosed that he might do so with security.

The action of Commander Kane has been so vigorous in a direction favored and desired by the Colombian Government which you represent, and his instructions and objects have been so entirely in the line of Colombian interests, that an unfavorable construction imputing disrespectful language to him should not be placed upon an expression contained in a hasty telegram written to his superior in office.

For my part, I am positive that no offense was intended; and I trust this frank statement will entirely satisfy the friendly mind of the honorable representative of Colombia in the United States.

Accept, sir, &c.,

T. F. BAYARD.

Mr. Scruggs to Mr. Bayard.

[Extract.]

No. 201.] LEGATION OF THE UNITED STATES,
Bogota, April 16, 1885. (Received May 26.)

SIR: On the 14th instant I sent you a cable dispatch, as follows:

* * * * * * *

This Government solicits the fulfillment of article 35 of the treaty of 1846 to secure the neutrality and sovereignty of the Isthmus of Panama. It desires that, for that purpose, some land forces be sent to disembark on the Isthmus.

This was sent in accordance with the request contained in the note of that date addressed to me by the Colombian minister for foreign affairs, a copy of which, with translation, I inclose. I also inclose a copy of my reply to the minister's note.

I have, &c.,

WILLIAM L. SCRUGGS.

[Inclosure 1 in No. 201.—Translation.]

Mr. Restrepo to Mr. Scruggs.

UNITED STATES OF COLOMBIA,
DEPARTMENT OF FOREIGN AFFAIRS,
Bogota, April 14, 1885.

Mr. MINISTER: I have received an order from the President of the Republic to manifest to your excellency that the State of Panama is in a perilous situation, viewed with reference to the preservation of order, as well exterior as interior, a situation which threatens the sovereignty of Colombia over that territory, since we find it

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impossible to send military forces thither with the necessary rapidity; and that the time has arrived for soliciting the intervention of the Government which your excellency worthily represents in accordance with article 35 of the treaty of December 12, 1846, to the end that pending the arrival there of the national troops said Government will undertake to maintain harmless the rights and authority of the Colombian Government in the State of Panama.

In the hope that your excellency will have the goodness to address the Government of the United States upon the subject of this note by the line of telegraph via Buenaventura, now in working order,

I gladly improve, &c., VICENTE RESTREPO.

[Inclosure 2 in No. 201.]

Mr. Scruggs to Mr. Restrepo.

[Extract.]

UNITED STATES LEGATION,
Bogota, April 15, 1885.

Mr. SECRETARY: In accordance with the request contained in your excellency's courteous note of yesterday, I have transmitted to my Government a cable dispatch, whereof the following is a copy:

* * * * * * *

I shall, immediately upon its receipt, communicate the response to your excellency.

Hoping the present disorders on the Isthmus may be of short duration, and that Colombia's sovereignty thereon may not be involved,

I have, &c.,

WILLIAM L. SCRUGGS.

Mr. Bayard to Mr. Jacob.

No. 2.] DEPARTMENT OF STATE,
Washington, November 3, 1885.

SIR: One of the first questions to be treated by you on your arrival at your post is the recent action of the Colombian Government in imposing, under the fifty-third law of 1884, customs duties upon imports into the territory covered by the Panama transit, and especially into the cities of Colon (Aspinwall) and Panama, from the 1st of December next.

For your information I annex copy of the proclamation of President Nuñez, of September 25, 1885, establishing the collection of duties as aforesaid, and also copy of a dispatch on the subject which has been received from Consul-General Adamson, No. 187, of October 10, 1885, with its inclosed article clipped from the Panama Star and Herald of October 10. This article presents in quite temperate language the objections to the proposed measure, as affecting the interests of the Isthmus which have grown up under the long régime of free trade there. With this we have little or nothing to do, although in view of the intimacy of our trade relations with the Isthmus, and the large investments of our citizens in business there, it may be proper to express doubts as to the wisdom of a measure which can only affect disastrously the prosperity of that district.

The thirty-fifth article of the treaty of 1846 between the United States and New Granada gives us, however, the right to call attention to the possible results of this measure, as affecting the unimpeded use of the isthmian transit. The whole tenor of that article is that nothing shall be allowed to hinder the free transit of persons and goods passing

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over the Isthmus, from ocean to ocean, to countries beyond. It is stipulated that there shall be franchise of duties as to all merchandise so crossing, either by actual omission to collect the duties or by a drawback on reexportation.

The original establishment of a free zone, embracing the ports of Colon and Panama and the transit route, was intended to accomplish the twofold object of developing the interests of the Isthmus and of leaving the transit absolutely free from any obstructive formality, such as the entrance into and exit from a customs *cordon* would almost necessarily involve.

It may be that the practical wisdom and foresight of the Colombian Government may successfully contrive and apply a revenue system at either end of the transit in such wise as to bear only on imports into Colombian territory without in any manner obstructing or delaying the guaranteed uninterrupted through transit. The complex formalities usually attending bonded transit and reexportation under drawback do not, however, afford much prospect that the through transit traffic will not seriously feel the burden of the new arrangements to be adopted, and if the operations of the transit be in any way hampered thereby, this Government would feel bound to regard it as a departure from the intent and letter of the treaty engagements in respect of such transit.

The question is naturally attracting attention and causing no little concern in this country. I transmit for your information copy of a letter of inquiry addressed to me by a mercantile house of New York, and of my reply.

You will take an early occasion to bring this matter of the free and unobstructed use of the transit to the attention of the Colombian Government, adding such arguments as your good judgment and discretion may suggest.

I am, T. F. BAYARD.

[Inclosure 1 in No. 2.]

Mr. Adamson to Mr. Porter.

No. 187.] CONSULATE-GENERAL OF THE UNITED STATES,
Panama, October 10, 1885. (Received October 24.)

SIR: In my No. 179, of September 4, I expressed the belief that the elections for a President of this Republic to succeed Dr. Nuñez would not be held at the time fixed by the constitution; that an attempt to change the constitution would probably be made, &c., and intimated the probability that our Government might again be called upon to protect its interests here.

In my No. 182, of September 15, I noted another sign of the drift of Colombian affairs, as shown by the decree suppressing all newspapers throughout the Republic (from which, however, the Star and Herald of Panama obtained exemption). Since that time various official acts made public justify the opinions heretofore given by me.

In the Panama Daily Star and Herald of October 9 was published an impromptu address delivered by President Nuñez on the occasion of receiving news of the capture of the rebel flotilla, in which he says:

"Gentlemen, the constitution of 1863 no longer exists. Very soon the people will give themselves a new one, which will satisfy their true necessities and consult the inclinations of the great majority of the Colombian people."

On the 10th of September President Nuñez issued his decree No. 594, as per copy herewith, calling upon the governments of the several States to send delegates to a convention to be held at Bogota on the 11th of November to reform the constitution, and on the same date he issued an address to the people giving the reasons for

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demanding said reform. It is believed here that the Government at Bogota has intimated to the civil and military chiefs of the several States the names of those persons who would be acceptable delegates.

The opinion is also generally entertained that the projected constitution will abolish State sovereignty, and on this point all parties agree that the change is desirable.

It is also supposed that the Presidential term will be extended from two years, as at present, to four or six years, and that the present incumbent will be his own successor. The friends of the national Government further say that in all probability a narrow zone of this Isthmus, including the railway and projected canal lines, will be declared a federal district, to be governed by an agent of the central Government, assisted by a large military force, and that the seat of government of the State of Panama will be removed to David, in the department of Chiriqui.

These things have had, comparatively speaking, but little effect on the public mind, but within the present week the people of Panama have been startled by the publication of decree No. 696, issued at Bogota on the 25th of September, establishing custom-houses on the Isthmus of Panama.

You may infer that this decree caused much feeling here by reading the editorial articles taken from the Weekly Star and Herald of this day, and remembering that said journal is only permitted to be published by the sufferance of the national Government, as stated in my No. 182.

Dr. Pablo Arosemena, who strongly opposes the proposition, was recently president of the State of Panama, and the committee appointed to represent the merchants is composed of men of the highest standing. On the part of both the Panama Railroad and the Interoceanic Canal Company it is claimed that the proposition is in violation of the rights conceded to said corporations.

If the Government persists in the enforcement of the decree it will certainly cause much ill feeling here, for it would touch the pocket of almost every adult male person in the State. As a prominent merchant feelingly remarked to me, "It would add $15 to the cost of a case of brandy."

I do not deem it within the scope of my duties to discuss the foregoing matter more fully, and therefore respectfully submit what is herein written for your information.

I am, &c.,

THOMAS ADAMSON.

[Inclosure 1 in inclosure 1 in No. 2.—Translation.]

DECREE No. 594.

The President of the United States of Colombia, considering it necessary to assist the reestablishment of the constitutional régime, disorganized by the recent rebellion, and taking into account the written manifestations of public opinion, as well as the antecedents of the constitution which is to be replaced, decrees:

ARTICLE 1. The governments of the States are called upon to send delegates to a national convention to be held on November 11 proximo, in the capital of the Union, to consider the measures which should be taken to reform the constitution.

ART. 2. The government of each State shall name two principal delegates, and three numbered substitutes for each one of these.

ART. 3. The delegates shall have a right to their daily expenses, the same as members of Congress.

Let this be communicated and published.

Given in Bogota on September 10, 1885.

RAFAEL NUÑEZ.

[Inclosure 2 in inclosure 1 in No. 2.—Translation.]

ADDRESS TO THE PEOPLE.

[From the Panama Daily Star and Herald, September 30, 1885.]

President Nuñez has issued the following address:

The President of the Republic to the Colombians.

The nation has just rescued herself, by her own prudent action, and thanks to Divine Providence, from an armed anarchy which made a last desperate effort to oppose the advent and establishment of liberal institutions. With judicious firmness

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the Government directed the defense of the society thus threatened with imminent disaster, and it has now to perform the duty of preparing the reestablishment of an altered constitutional regimen.

The infidelity of the sectional governments of Antioquia, Bolivar, Boyaca, and Tolima on the one hand, and the acts of sedition which were committed at Magdalena and Panama on the other, virtually deprived the expressed regimen in those States of its proper force and effect. Santander may be said to have been in the same condition since the last months of 1884, in consequence of disturbances, apparently local, which occurred there in the middle of August, although the recognized representative of the legitimate Government, Dr. Narciso Gonzales Lineros, has not failed to exercise his authority without interruption throughout the State, in spite of the vicissitudes of war. The same cause has also prevented the voting for the President of the Union, which should have been decided on the 6th of the present month, and the election of members to the National Congress. In accordance with the precedents of the constitution, it has become indispensable to promote a reunion of the governments of the States as the most natural method, under the circumstances, of reconstructing the shattered elements of the Union on well-defined principles.

The numerous and expressive manifestations which the municipalities and citizens of the Republic daily direct to the Government clearly indicate the necessities of the entire country in the present important epoch of our history. Reform is therefore sanctioned beforehand by the unequivocal will of the people. In undertaking the necessary task of formulating this will into written institutions, a task in which I invoke the protection of the All-Powerful, I am but fulfilling an imperious duty, contributing by my conscience and authority to the creation of a political order, free from dangerous fallacies, which may be susceptible of realizing that wished-for development of our young civilization that has been unhappily so often interrupted. We find ourselves unavoidably in a constitutional interregnum, but in this interregnum no legitimate interest will suffer; for the severe prescriptions of the law of peoples will be applied with the sole object of the complete pacification of the country, in order that the great sacrifices which the victories of the national arms have cost may not prove to have been made to no purpose, and in order that prudential measures may speedily and effectively check the public misery which, after some years of social insecurity, already begins to assume alarming proportions.

RAFAEL NUÑEZ.

BOGOTA, *September 10, 1885.*

[Inclosure 3 in inclosure 1 in No. 2.—Translation.]

PROPOSED CUSTOM-HOUSES ON THE ISTHMUS.

UNITED STATES OF COLOMBIA,
OFFICE OF THE CUSTOM-HOUSE OF BUENAVENTURA,
October 1, 1885.

To the civil and military chief of the State of Panama:

I have been ordered by the national secretary of finances to transcribe for you the following decree, that it may be executed and profusely published on the Isthmus:

Decree No. 696, establishing custom-houses on the Isthmus of Panama.

The President of the United States of Colombia, in execution of the 8th article of the law No. 53 of the year 1884 on ways and means, decrees:

SECTION 1. From the 1st of December next, the custom-houses allowed by the law 53 of the year 1884 shall be established and begin to have their effect in the ports of Panama and Colon.

SEC. 2. By the aforesaid custom-houses the same duties shall be collected that are charged by the other custom-houses in the Republic as "*importation duties*," with a reduction of 40 per cent.

SEC. 3. The other regulations common to the other custom-houses will rule at the aforesaid ports. In accordance with this, the requisites of certifying the statements of cargoes (sobordos) and invoices, as enacted by articles 41, 43, 47, and 48 of the fiscal code, must be duly enforced in foreign ports from which merchandise is embarked.

Given in Bogota on the 25th of September of the year 1885.

RAFAEL NUÑEZ.

The secretary of war, acting as secretary of finances:

FELIPE ANGULO.
FELIPE MELENDES.

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PROPOSED CUSTOM-HOUSES ON THE ISTHMUS.

The public will read with surprise and regret the decree of his Excellency President Nuñez, which we publish in our English and Spanish columns to-day. If it could be carried into practical effect it would simply create a revolution in the fiscal policy of the Isthmus that would at once be disastrous to commerce and unproductive to the Government itself. The decree orders the establishment of custom-houses in this city and Colon. Apart from the fact that merchants and other traders on this isthmus, and the consumers of imported articles also, have the right sanctioned by time and a long-prevailing custom, to be exempt from imposts such as are now proposed, it would be indiscreet and display considerable unwisdom to insist upon so unconstitutional a change. In the first place, the revenues that would be collected would hardly pay the cost of initiating and keeping a large staff of officials; then the change would be most vexatious to merchants and embarrass commerce in every way to an extent that it is impossible to anticipate. In fact, it would inflict the death blow to all branches of trades, already fearfully depressed. Large direct taxes are levied in the shape of the monthly contribution, and to attempt to increase the charges to which merchants are already liable would be to consummate the ruin of the Isthmus.

We say it is impossible the decree can be carried into effect, for the reasons we have stated, and for others which will occupy our pen in a future article. All parties sympathize with the Government in its financial difficulties, but none are blind to the fact that the remedy proposed would simply amount to an aggravation of those difficulties, and lead to irritation and discontent. Every class of the inhabitants, as well as the importers, is interested in this important question, and it is to be hoped that united and respectful remonstrances will induce a reconsideration of the subject and lead to a withdrawal of the decree, which is injudicious and unworkable. We did not exaggerate when in a former article we stated that the public opinion of the country was opposed to the reimposition of custom duties on the Isthmus, because the necessities and welfare of the inhabitants depend upon free transit, and opposition to the institution of custom duties has been known to exist for half a century.

Since 1835 the law of May 25 conceded to the districts of Panama and Porto Bello the privileges of free ports during the period of twenty years, when "there would be a canal or a railway existing," and later, under the law of June 2, 1849, a decree was issued to take effect on the 1st of January following, abolishing the customs duties on the Isthmus without fixing any limitation as to time. At that time the contract for the construction of the present railway had already been agreed upon in Washington, on the 28th day of December, 1848, and the work was inaugurated in 1855, this measure having been decided upon on April 15, 1850.

Any one who has considered this subject in the least will see the evidence of this in the manner in which the New Granada legislators were convinced that there was no way to reconcile the system of tariff duties through the customs with prompt and absolute free transit. The indispensable restrictions to avoid fraud as to the importations of merchandise must necessarily restrain, more or less, free transit, and would require a corps of employés, who would be so many more hindrances and absorb the revenue to be derived. Nor is it probable that without very high salaries responsible persons could be had to perform these duties in a country where the expenses of living are so very high.

The inevitable result of the restriction in the transit (in case the customs service should not prove to be merely an expensive formality) would be that our rivals would take advantage of these financial errors. The transcontinental railways would be the carriers of the merchandise which now goes through the Isthmus of Panama from New York to San Francisco, and by the Straits of Magellan that coming from Europe or the United States and proceeding to the South Pacific republics, and *vice versa*.

To what extent merchandise and articles of consumption increase in Panama and Colon can easily be computed. These results are not understood in Bogota, and particularly by those who do not take the trouble to study this question. Nor is the fact that the railway freight charges are very high for those goods which are destined to be consumed in the country, for the simple reason that there is no competition. Another reason is that the products of the country have diminished to a large extent; everything is imported, even articles of primary necessity. The farmers abandon the fields to escape conscription, or are attracted by the high wages paid by the canal company; and the cattle, at one time so plentiful on the Isthmus, are decreasing at an alarming rate, so much so that it is now necessary to bring them from Bolivar and the Cauca to supply the demands of the market.

From this we see also the impossibility of substituting another tax for the commer-

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cial contribution levied by the State since 1850. There is no production upon which to impose new taxes, and therefore the goods imported will have to meet both the State and national taxes. If any one should ask, How do we manage to pay for the goods imported? we would point out to him that the large and increasing amount of metallic currency which the canal company furnishes in payments to their employés enables us to do so. From this also results the high prices, which, if it does not injure those who receive remunerative wages, does affect those who live upon their limited incomes or fixed salaries.

We will conclude by appealing to the judgment of the authorities. The decree which establishes the customs tariff from the 1st of December (a limit somewhat short) has surprised the inhabitants of the Isthmus, because, although the law existed, it was considered too unreasonable to imagine that it would be carried into effect. The evils of which we complain consist not only in what we have stated, but also in something worse. The maritime communications are the only ones which the constitution reserved to the National Government, and if these had not been reserved, if the State of Panama did not have the high honor to be one of the nine States of the Republic of Colombia, the annual income which the nation receives from the railway would belong to her treasury, and also that which will be derived from the canal company. From this originated the fact that upon the suppression of the customs tariff the State of Panama obtained the right of taxing the mercantile interest to replace this revenue.

Having demonstrated that both cannot conjointly exist, nor can the State of Panama impose an additional tax, it follows that there is no reason why custom-houses should be established. There is not, in fact, a rational or prudent reason, except with those who seek for an imperious measure, which will tend to weaken rather than to strengthen the ties which unite the State of Panama to the other States of the Colombian Union. Let it be understood that the projected political reforms, especially if they interfere with the autonomy of this State, will not be calculated to better the political situation.

A very important meeting of the mercantile community took place at the rooms of the International Club on Wednesday afternoon to consider the decree of President Nuñez ordering the establishment from the 1st December ensuing of custom-houses on the Isthmus. The greatest unanimity prevailed, showing the deep interest taken in the subject by all parties. J. B. Poylo, esq., was unanimously called to the chair, and explained very lucidly the important object of the meeting.

Dr. Pablo Arosemena, being requested, reviewed the legal bearing of the case, and eloquently defended the rights of the State of Panama to a voice in so momentous a question as the present one. Quoting from the act of incorporation of the federation of Panama with the Union, he said that custom-houses could not be established without the acquiescence of the State of Panama. Further, he argued that article 7, of the contract celebrated with the canal company, distinctly provides that custom-house restrictions shall only be placed on goods destined for other portions of the Republic, and that from the commencement to the termination of the work, and during its continuance, the ports at both extremities of the canal shall be free and open to the commerce of all nations. [Loud cheers.]

Dr. Amador next addressed the meeting and expressed his entire disapproval of the establishment of custom-houses on the Isthmus. He spoke very emphatically and proved conclusively the great inconvenience such arrangement would create to commerce, and he further dilated on the utter impracticability of the proposed scheme. He said it would not be remunerative to the Government under any circumstance, and when he recalled the recollection of the recent disasters on the Isthmus, he was certain the change would extinguish entirely the lingering sparks of vitality still visible in the country. [Applause.]

After remarks from several other gentlemen, all of whom evidenced their cordial sympathy with the object of the meeting, and signified their alarm at even the possibility of the proposed change being carried into effect, Dr. Francisco Ardila said he was sufficiently authorized by the directors of the canal company to say that they would protect and defend the rights secured to them by the canal contract to the extent to which human power could do. [Cheers.]

A committee was then appointed to prepare a memorial to the President, pointing out the disadvantages spoken of, and the danger of the enforcement of the decree, and praying that it be revoked. The committee consists of J. B. Poylo, Pablo Arosemena, D. H. Brandon, E. L. Salmon, and Dr. Amador.

It was further resolved to telegraph to his Excellency the President, asking him to suspend the operation of the decree until the memorial adopted at the meeting shall be received by him and considered.

A vote of thanks to the chairman brought the meeting to a close.

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[Inclosure 2 in No. 2.]

Messrs. A. S. Lazarus & Co. to Mr. Bayard.

NEW YORK, *October 26, 1885.*

SIR: Noticing that the President of the United States of Colombia has issued a proclamation declaring that on and after December 1, 1885, import duties will be levied on imports into Aspinwall and Panama, we ask the favor of a reply as to whether this is not in contravention of treaties now existing between this country and that Republic.

Soliciting the favor of an early reply, we have, &c.,

A. S. LAZARUS & CO.

[Inclosure 3 in No. 2.]

Mr. Porter to Messrs. A. S. Lazarus & Co.

DEPARTMENT OF STATE,
Washington, October 31, 1885.

GENTLEMEN: Your letter of the 26th instant has been received. You therein ask whether the recent proclamation of the President of the United States of Colombia, declaring that on and after December 1, 1880, import duties will be levied on imports into Aspinwall (Colon) and Panama "is not in contravention of treaties now existing between this country and that Republic."

In response I inclose a printed copy of the treaty of 1846 between the United States and New Granada, now Colombia. You will perceive that the thirty-fifth article thereof stipulates that citizens of the United States shall have in the territory of the interoceanic transit—

"All the exemptions, privileges, and immunities concerning commerce and navigation, which are now or may hereafter been enjoyed by Granadian citizens, their vessels, and merchandise;" that this equality of treatment extends to the transit, and, further, "that no other tolls or charges shall be levied or collected upon the citizens of the United States, or their said merchandise thus passing over any road or canal that may be made by the Government of New Granada, or by the authority of the same, than is under like circumstances levied upon and collected from the Granadian citizens; that any lawful produce, manufactures, or merchandise, belonging to citizens of the United States, thus passing from one sea to the other, in either direction for the purpose of exportation to any other foreign country, shall not be liable to any import duties whatever, or, having paid such duties, they shall be entitled to drawback upon their exportation," &c.

From this it is seen that there is no treaty obligation to make Colon and Panama free ports; that the guarantee of the treaty is limited to equal treatment of American goods with those of native Colombians or of the most-favored nation, with an exemption from customs duties in the case of merchandise, &c., passing over the transit to countries beyond.

Should the collection of duties on imports into Colombia at Aspinwall and Panama be enforced in such a way as to hamper the stipulated free transit this Government would feel bound to complain.

I am, &c.,

JAS. D. PORTER,
Assistant Secretary

Mr. Bayard to Mr. Becerra.

DEPARTMENT OF STATE,
Washington, November 14, 1885.

SIR: I have the honor to address you in relation to the pending arbitration for the settlement of the dispute between Colombia and Costa Rica touching the boundary line between those countries.

By a treaty signed in 1880 the Governments of those countries agreed to submit the question of boundaries to arbitration, and named as arbitrators, in the first place, His Majesty the King of the Belgians;

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next, in case he should decline to act, His Majesty the King of Spain; and lastly, in the event of both these declining, His Excellency the President of the Argentine Republic.

As you are aware, the Government of the United States, in 1881, addressed the Governments of Belgium, Spain, and the Argentine Republic, inviting attention to the tendered arbitration and suggesting that as the ownership of territory in dispute might involve question as to the guarantee, by the United States, under the treaty with New Granada of 1846, of the integrity of the New Granadian (now Colombian) sovereignty over the territory of the Isthmus for the purposes of transit, the Government of the United States, where either its rights or interests are concerned, would not hold itself bound by any arbitration, where it had not been consulted on the subject or method of the arbitration and had had no voice in the selection of the arbitrator. This declaration was, however, accompanied by a disclaimer of any purpose on the part of this Government to interfere to prevent the accomplishment of such arbitration or to undertake to express any opinion as to the acceptance, by either of the arbitrators named, of the invitation tendered.

His Majesty the King of the Belgians declined to act as arbitrator. The invitation to so act was thereupon extended, by the Governments of Colombia and Costa Rica, to His Majesty the King of Spain.

It is understood that in the light of the announcement put forth by the United States in 1881 His Majesty is reluctant to act in the premises, but in the absence of a formal declination on his part, the invitation appears to be still open.

Overtures, in an informal and confidential manner, have been recently made at Madrid by the ministers of Colombia and Costa Rica to the representative of this Government there, looking to the discovery of some basis whereby the arbitration may be accepted by His Majesty the King of Spain; and inquiries made through the like channel by the Spanish Minister for Foreign Affairs tend in the same direction.

It was intimated on the one hand by the minister of Costa Rica in Madrid that he would be willing to negotiate *ad referendum* a formal treaty with Mr. Foster, as the plenipotentiary of the United States, whereby Costa Rica would concede to the United States the same guarantees as those in the treaty of 1846 between the United States and New Granada, in respect of any new territory not heretofore possessed by Costa Rica, which might pass to it in virtue of the proposed arbitration; and he further proposed to define in such treaty the limits of the territory in dispute as extending no further eastward than the line from the Coto River, on the Pacific, to El Escudo de Veragua, on the Caribbean Sea.

On the other hand, the minister of Colombia intimated to Mr. Foster that his Government could not regard as coming under the guarantees of territorial integrity and sovereignty found in the treaty of 1846 any territory which the arbitration might decide not to belong to Colombia.

Intimation has likewise been made directly here in Washington, tending to show the desire of Colombia and Costa Rica that the boundary contention between them should be ended in a manner alike honorable and satisfactory to both of them, and without affecting any just sensibility or impairing any right of the United States in the premises.

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I do not understand that these overtures regard the attitude of the United States as one of objection to any arbitration to which they are not an advisory and consenting party, and that it is the desire or expectation of either Colombia or Costa Rica that such supposed objection should be withdrawn and the contemplated arbitration permitted to proceed. I assume that the purpose in view is to obtain such modification of the declaration made by my predecessor in 1881 as may remove any embarrassment under which His Majesty the King of Spain may rest, and permit him, in the exercise of his own high and free discretion, to accept, if he will, the arbitration tendered to him.

Two closely allied points present themselves for consideration in this connection, namely, the extent of the disputed territory subjected to arbitration, and the interests or rights of the United States or its citizens in respect of such disputed territory.

The admission of Costa Rica that the easterly limit of her claim extends only to the Coto River and El Escudo de Veragua appears, in my judgment, to remove apprehension that the arbitration may reach or affect the Colombian territory employed for actual or prospective transit across the Isthmus from ocean to ocean. I understand the guarantee of the treaty of 1846 with New Granada to concern "The rights of sovereignty and property which New Granada has and possesses over the Isthmus, and that the guarantee is given with the view that the free transit from the one to the other sea may not be interrupted or embarrassed in any future time while this treaty exists;" and, further, that this guarantee is given "In order to secure to themselves (the United States) the tranquil and constant enjoyment of the advantages stipulated by the treaty in favor of the citizens and commerce of the United States in respect of the isthmian transit. It is true that the territory within which the treaty guarantee may apply is defined as comprehending "The part of the Granadian territory generally denominated Isthmus of Panama, from its southernmost extremity until the boundary of Costa Rica. But it may be said that, at the time the treaty was concluded, the surface of the Isthmus was seamed with projected routes of interoceanic transit, from the Atrato River on the east to the Chirigui Lagoon on the west, and that, no route being specified in the treaty, its obligations and rights were made broad enough to comprise any or all practicable lines of transit. Were the Chiriqui route actually or prospectively occupied for a practicable transit the direct and positive application thereto of the treaty guarantee of the United States could not be questioned, and the immediate interest of the United States in any issue of territorial sovereignty which might, by arbitration or otherwise, annul the treaty rights and obligations by changing the ownership of the route would be evident, and no derogation of those rights and obligations in virtue of a later arrangement between Colombia and a third power could be acquiesced in.

The Chiriqui route is, however, not at present a practical factor in the problem. It was soon abandoned in favor of the transit actually opened by railway between Colon and Panama; and along the same line a ship canal is in process of construction.

Admitting the logic of events, whereby the rights and duty of the United States toward Colombia in respect of the transit have become restricted, since 1846, to a single portion of the Isthmus, I would be prepared to amend my predecessor's statement of 1881, so far as it

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relates to the guarantee of Colombian sovereignty on the Isthmus up to the frontier of Costa Rica, provided the Governments of Colombia and Costa Rica unite in or concurrently make an explicit declaration to this Government that the rights of the United States in the matter of the isthmian transit are not to be affected in any way by the submission to arbitration which those Governments have agreed upon.

So much for the easterly limit of the territory in dispute. The westerly limit presents no less important questions.

It appears that the claims of Colombia extend along the shore of the Caribbean Sea to Cape Gracias á Dios, and comprise a coastwise belt which would exclude Costa Rica from an Atlantic frontage and embrace the Mosquito coast of Nicaragua.

No treaty between Colombia and Nicaragua is known to exist whereby the question of territorial limits between them might be submitted to arbitration; and no question as between those countries is to be propounded for the consideration of the arbitrator who may be called upon to adjudicate the boundary question. The function and power of the arbitrator is to be distinctly limited to the single fact submitted, i. e., the ascertainment and declaration of the true boundary line between the two States, and his award is to embrace no other fact nor affect the rights of any third party.

The Government of the United States has with Nicaragua treaty engagements covering the use of any interoceanic transit through Nicaraguan territory.

Moreover, at various points of the territories claimed by Colombia rights have accrued to citizens of the United States, by grant or otherwise, from the authority in possession.

The impairment of these public or private interests by any result of the proposed arbitration could not be recognized by us.

In short, as to these as with respect to whatever effective guarantees under the Colombian treaty of 1846 may exist in the disputed territory, the Government of the United States must hold and expect that the *status quo* shall be unchanged by the contemplated proceeding.

This Government desires to facilitate the resort to arbitration in peaceful settlement of questions between States whose intercourse, for their own sake and in the interest of tranquillity on the American continent, should be of the friendliest character. It has on many occasions advocated and resorted to arbitration in settlement of international differences, although never in derogation or ignorance of the rights of third parties. It is pleased to see among its neighbors a growing tendency to this resort; and in the present instance it would be especially gratified to have the arbitral function bestowed upon a power which, in its traditional relation to both the parties as their original mother country and in its custody of the historical archives necessary to the examination of the question, has every inducement to reach an impartial decision commanding universal respect and become an accepted finality.

The considerations herein set forth are, however, sufficient to show the necessity of a frank and honorable undertaking between the parties to the proposed submission and the Government of the United States whose interests may be affected thereby, to the end that any hesitation of His Majesty the King of Spain to accept the proffered trust may be removed.

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The conditions of such an undertaking are these:

First, that the Governments of Colombia and Costa Rica make concurrent declaration to the Government of the United States, and to the arbitrator, defining the territory in dispute and expressly limiting the functions of the arbitrator to the single issue of the boundary, and affecting no other rights than those of the parties to the submission.

This declaration should so define the easternmost limit of the contention as to make it clear that no question of isthmian transit under the Colombian treaty of 1846 can arise.

Secondly, that this declaration embrace an announcement by the parties that whatever rights the United States or other citizens may possess on either side of the boundary which may be established shall not be affected by the award, but shall pass with the soil and be respected by the new owner as though originating under his grant.

Such a comprehensive declaration seems to me in every way preferable to the proposal made by the Costa Rican envoy at Madrid for a treaty to determine these questions as between the United States and Costa Rica.

As I have shown, the claims of Colombia involve American rights in the premises, which would likewise require to be made the occasion of treaty stipulations between the United States and Colombia. Such a complex treaty adjustment of the matter would amount to a tripartite agreement of submission by including the United States therein, a situation which this Government deems undesirable, because foreign to its policy which leads it to avoid participation in the domestic concerns of its neighbors. The rights of the United States in the matter are complete in themselves, and while we are entitled to demand respect for them, we are not called upon to share in their submission to the arbitrament of a third power.

Upon the receipt of such a declaration as I have herein suggested, the Government of the United States will have pleasure in informing His Majesty the King of Spain, or any other arbitrator accepted by Colombia and Costa Rica of the fact, announcing that in view thereof we withdraw the notification made in 1881—that this Government would not hold itself bound by the arbitration.

A communication similar to this has been addressed by me this day to the Costa Rican chargé d'affaires in this capital.

Accept, sir, &c.,

T. F. BAYARD.

Mr. Bayard to Mr. Becerra.

DEPARTMENT OF STATE,
Washington, January 23, 1886.

SIR: I have the honor to inform you that I have received a telegram from Mr. Scrymser, the president of the Central and South American Telegraph Company, New York, stating that the operations of the French Panama Canal Company in the Bay of Panama are endangering the cable of his company at that point.

Under Article XIII of the treaty of December 12, 1846, with the United States, the government of Colombia is bound to protect the

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property of American citizens there situate; and the object of this note is to bespeak your kind immediate offices to the end that your Government may prevent the damages threatened this American interest by the French company.

In making this request it is also proper to refer to Article II, of the convention for the protection of submarine cables, to which Colombia was a party, by which that Government seems bound to take notice of, and prevent and punish, the breaking or injury to a cable.

Accept, sir, &c.,

T. F. BAYARD.

Mr. R. Becerra to Mr. Bayard.

[Translation.]

COLOMBIAN LEGATION,
Washington, January 27, 1886.

SIR: I had the honor to receive in due course the note which your Department of State was pleased to address to me, of date 23d instant, in regard to the loss and injury which the enterprise of the Southern and Central American cable may suffer, or is already suffering, in consequence of the works which are being carried on by the Panama Canal Company in the bay of that name, and in regard to the protection from Colombia which the interests of the former enterprise have the right to claim in accordance with the spirit, if not clearly, in my opinion, the letter of the treaty of 1846.

After having examined the matter with the attention which its importance demands, I am of opinion, as far as I am concerned, that the request for protection which the honorable Secretary of State is pleased to express in the note mentioned is a just one, and consequently I shall address my Government with the proper recommendations not only by the next mail of the 30th, but also previously by the cable, with a view to hasten the important work of conciliating the interests of civilization, which for a moment seem opposed, in the Colombian Isthmus.

I avail myself of this opportunity, however, to briefly inform the Government of the honorable Secretary of State that the Colombian Government, actively pursuing its intention to facilitate and expedite its protective action over the Isthmus and over the great commercial interests which have it as their theater, has proposed and carried a measure that, among the changes made in the national constitution, should be included one by which the territory of the Colombian Isthmus takes the form of a Federal department, and is to be administered by the immediate officers of the Federal Government.

This change, the execution of which will shortly be commenced, has no other object than that of providing for, without the delay arising from the intermediation of the local authorities, which, to a certain point, are independent, the heavy responsibility assumed by Colombia from the time when, adopting a liberal and generous policy, she offered to the civilized world, and especially to the citizens of the United States of America, the unimpeded and ready enjoyment of that privileged strip of her territory.

General Santo Domingo Vila, the last legal president of the State of

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Panama, has been appointed governor of the new department, and all the means he needs in order to exercise in it efficiently the authority with which he is clothed have been placed at his disposal.

I am, &c.,

RICARDO BECERRA.

Mr. Porter to Mr. Becerra.

DEPARTMENT OF STATE,
Washington, February 1, 1886.

SIR: I have the honor to acknowledge the receipt of your note of the 27th ultimo, by which you inform me that you have invoked, by cable, the protection of your government for the interests of the Central and South American Telegraph Company in the Bay of Panama, imperiled by the Panama Canal Company, and that the mail of the 30th ultimo would carry your letters to the same intent.

Your action is much appreciated, and in view of it I can but anticipate a prompt and just disposition of the matter.

I note with great interest your statement respecting the new, distinctive measure of your government for the more effective protection of the Isthmus.

Accept, sir, &c.,

JAS. D. PORTER,
Acting Secretary.

Mr. Becerra to Mr. Bayard.

[Translation.]

LEGATION OF COLOMBIA IN WASHINGTON,
Washington, May 4, 1886.

SIR: The lamented death of Don Alfonso XII, King of Spain, whom the republics of Costa Rica and Colombia had by special convention of 1880 selected as arbitrator to decide their ancient question of territorial limits, rendered necessary the celebration of a supplementary convention which may remove, the case arising, the difficulties which that melancholy occurrence might oppose to the final execution of their common purpose.

For this reason, and having communicated to my Government the amicable views and suggestions made by the Government of the United States touching the constitution of that arbitration and the decision of its judge, the former instructed its respective diplomatic representative to the end that, in concluding the supplementary article referred to, the two points principally adverted to in the note of the American Department of State should be inserted in its text, giving thereby a new proof of the desire which animates it to satisfy your Government and to render its foreign policy, with reference to the interests of the Isthmus of Panama, always conformable to the mutual obligations and duties (rights?) of the treaty of 1846.

As a result of that resolution on the part of my Government, I have the honor to transmit to the honorable Secretary of State a certified copy of the additional convention signed at Paris between the plenipotentiaries of Colombia and Costa Rica, strongly hoping that the

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terms in which it refers to the boundary claimed by the one and the other party and to the prior rights of the United States will leave as the only remaining applicable consideration in the note of the American department for foreign affairs, above referred to, the kindly acceptance given from the outset by your Government to the choice of the former mother country as the arbitrator of the boundary questions still pending between the republics of Spanish origin.

I have, &c.,

RICARDO BECERRA.

[Translation of supplementary convention relative to arbitration of the boundary dispute between Colombia and Costa Rica, signed at Paris, January 20, 1886.]

The undersigned, to wit, Leon Fernandez, envoy extraordinary and minister plenipotentiary of the Republic of Costa Rica in Spain, France, and Great Britain, and Carlos Holguin, envoy extraordinary and minister plenipotentiary of the United States of Colombia in Spain, desiring to remove the obstacles which may arise in respect to the execution of the convention of arbitration concluded between their respective Governments on the 25th of December, 1880, and considering:

First. That His Majesty the King of Spain, Don Alfonso XII, had verbally deigned to accept the office of arbitrator which the undersigned proposed to him in the name of their respective Governments, to decide the questions of territory pending between the two republics, and that, therefore, the convention of arbitration of December 25, 1880, did in fact begin to be executed before the Government of Spain;

Second. That it is for the interests of the two republics to continue before that Government the proposed arbitration, as well because the greater part of the original documents which must serve for the true and full knowledge and decision of the pending questions of boundary exist in the archives of Spain, as by reason of the fact that there are in that country a large number of persons especially devoted to American researches whose opinion and counsel will effectively aid in reaching an arbitral decision in accordance, as far as possible, with truth and justice; and

Third. That the sad and premature death of His Majesty, Don Alfonso XII, may occasion doubts with respect to the competency of his successor to continue to have cognizance of the said arbitration until a definitive judgment be reached, have agreed to conclude this additional convention, *ad referendum*, supplementing that signed at San José on the 25th of December, 1880, by the plenipotentiaries of Costa Rica and the United States of Colombia for the settlement of the question of boundaries pending between the two republics.

ARTICLE 1. The Republic of Costa Rica and the United States of Colombia recognize and declare that, nothwithstanding the death of His Majesty, Don Alfonso XII, the Government of Spain is competent to continue to have cognizance of the arbitration proposed by the two republics, and to pronounce irrevocably and without appeal a definitive judgment in the litigation now pending, concerning the territorial boundaries between the high contracting parties.

ARTICLE 2. The territorial limit which the Republic of Costa Rica claims, on the Atlantic side, reaches to the island of the Escudo de Veraguas and the Chiriquí River (Calabevora), inclusive, and on the Pacific side to the Chiriquí Viejo River inclusive to the east of Point Burica. The territorial limit which the United States of Colombia claims reaches on the Atlantic side to Cape Gracias á Dios, inclusive, and on the Pacific side to the mouth of the Golfito River, in the Golfo Dulce.

ARTICLE 3. The arbitral decision will be confined to the disputed territory which lies within the extreme limits above described, and shall not affect in any manner the rights which any third party, who has not joined in the arbitration, may allege to the ownership of territory comprised within the indicated limits.

ARTICLE 4. If, for any cause, the arbitrator can not pronounce his decision within the time positively fixed by the second article of the convention of arbitration of December 25, 1880, the high contracting parties agree to extend the aforesaid time for ten months longer, to count from the date when the first-fixed time shall expire.

ARTICLE 5. With exception of the foregoing additions and modifications, the convention of arbitration of December 25, 1880, remains in force in all its parts.

In faith whereof we sign this, in duplicate, and set hereunto our respective seals, in the city of Paris, this 20th of January, 1886.

LEON FERNANDEZ. [SEAL.]
CARLOS HOLGUIN. [SEAL.]

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Mr. Bayard to Mr. Becerra.

DEPARTMENT OF STATE,
Washington, May 26, 1886.

SIR: I have the honor to acknowledge the receipt of your note of the 4th instant concerning the submission to the arbitration of the Government of Spain of the long-pending dispute between the United States of Colombia and the Republic of Costa Rica.

I am also in receipt of a note in the same sense, under date of the 3d instant, from Señor Manuel M. Peralta, envoy extraordinary and minister plenipotentiary of Costa Rica at this capital.

Your note and Mr. Peralta's communicate to me a copy of the supplementary articles signed at Paris on the 20th January last, by the plenipotentiaries of Colombia and Costa Rica, whereby the terms of the original submission contemplated in the convention of arbitration of December 25, 1880, between Colombia and Costa Rica are explained and defined, and provision made for the conduct of the arbitration by the Government of Spain in view of the lamented death of His Majesty, Don Alfonso XII, to whom the high office of arbitrator had been tendered by the contracting parties.

You are pleased to invite my attention to the inclusion in that supplementary convention of the points adverted to in my note addressed to you on November 14, 1885, and to assure you that it is designed to meet the views of the Government of the United States touching the effects of such arbitration upon any rights of guaranty or tenure which the Government of the United States or it citizens may be found to have with respect to the territory in dispute.

The third article of that supplementary convention reads as follows:

ARTICLE III. The judgment of arbitration is to be confined to the disputed territory within the extreme limits above described, and can not in any sense whatever affect the rights which a third party, not taking part in the arbitration, may allege to the ownership (propiedad) of the territory comprised within the limits described.

The Government of the United States accepts this formal declaration as a sufficient and concurrent response on the part of Colombia and Costa Rica to the points presented in my identic note of November 14, 1885, understanding that the term "ownership" (propiedad) is employed in no restrictive sense, but includes all possessory or usufractuary right and all easements and privileges which the United States or their citizens may possess in the disputed territory, not only as respects the relation of the United States toward each or either of the contracting parties to the arbitration, but also with regard to the relationship of the United States or their citizens toward any third government not actually a party to the submission.

This declaration on the part of the United States is proper, in view of the fact announced in your note to me of November 10, 1885, and further declared and defined in Article II of the supplementary articles of January 20, 1886, that the region in dispute not only embraces territory to which the concessions of Colombia and Costa Rica and the mutual guaranties of the United States with Colombia might be found applicable, but also includes territory coming under the purview of the existing arrangements of Nicaragua with the United States and with citizens of the United States.

So accepting the declarations of the supplementary articles of January 20, 1886, as fully responding to the views and propositions set

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forth in my note to you of November 14, 1885, I will have pleasure forthwith in carrying out the promise I then made, to announce to the Government of Spain, as the arbitrator accepted by Colombia and Costa Rica, that, in view of the formal understanding reached by the contracting parties to the arbitration whereby the scope and effect thereof are defined without impairment of any rights of third parties not showing in the arbitration the Government of the United States withdraws from the notification made June 25, 1881, that it would not hold itself bound by the results of such arbitration.

In so doing, the Government of the United States feels that it is consistently lending its countenance toward the general promotion of the policy of arbitration which it has itself advocated and adopted on important occasions as a means of adjusting international differences or disputes, and aiding a resort whereby the peace and welfare of the South American States can be secured and the losses and demoralization attendant upon costly and useless warfare be prevented.

I have addressed a communication in a similar sense to the envoy of Costa Rica at this capital.

Accept, sir, &c. T. F. BAYARD.

Mr. Bayard to Mr. Maury.

[Extract.]

No. 12.] DEPARTMENT OF STATE,
Washington, February 25, 1887.

SIR: The French Canal Company avows its control of the land line of telegraph operated in connection with the Panama Railroad Company, and asserts its determination to retain the monopoly alleged to have been derived from the railway concession. The railroad company gives notice, for its part, that "theirs is *a private wire*, and they pass messages between Panama and Colon *by courtesy*."

The mere fact that the international communications of two continents over an intricate net-work of cables is dependent for an important connecting link upon the "courtesy" of a corporation and the use of a line of wire alleged to be "private," and constructed as an accessory to a railway, is a matter of concern to the governments which are constrained to use such limited and unstable means of official intercommunication.

The guaranties of the treaty of 1846 are necessarily general and somewhat vague, especially as to matters not distinctly foreseen when it was framed. It may not be practicable or even expedient to seek to define its provisions, for the progress of invention and development of material forces would soon demand a readjustment of its terms. But it is very evident, without resorting to elaborate argument, that if telegraphic facilities are among the means of interoceanic communication covered by the treaty, they must be open and public and their free and neutral use fully secured. The announcement that the railroad and canal companies' telegraph line from Colon to Panama is a *private* wire, and that the use of it by the Governments of the United States and Colombia and by the commercial public is permissive only, is, if true, abundant demonstration that no transisthmian telegraphic communication now exists such as was contemplated and falls under the

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necessary guaranties of the treaty of 1846. That instrument guarantees to us "equal, tranquil, and constant use" of whatever means of transit are provided for "correspondence," and the telegraph is assuredly the most important and useful of all such means.

I am, etc., T. F. BAYARD.

Mr. Bayard to Mr. Maury.

[Extract.]

No. 44.] DEPARTMENT OF STATE,
Washington, November 14, 1887.

SIR: Referring to the views of the Department as expressed in its instruction No. 12, of the 25th February last, touching the considerations which should operate to prevent the dependence of this and other governments upon the mere courtesy of a private telegraph company on the Isthmus for the transmission of messages, I inclose a copy (not printed herewith) of a further complaint against the Panama Railroad Company for its refusal to receive messages for transmission across the Isthmus.

I am, etc., T. F. BAYARD.

Mr. Maury to Mr. Bayard.

[Extract.]

No. 67.] LEGATION OF THE UNITED STATES,
Bogota, December 19, 1887.

SIR: I have the honor to acknowledge the receipt of your No. 44, of November 14 last.

I now have the honor to transmit herewith a communication I have this day addressed to Mr. Carlos Holguin, minister of foreign affairs, and will in due time communicate to you his reply, and what other steps I may find it necessary to take in bringing this subject to a satistory settlement.

I shall deliver this communication to the minister in person, and urge prompt action in the matter.

I am, sir, &c., DABNEY H. MAURY.

[Inclosure in No. 67.]

Mr. Maury to Mr. Holguin.

LEGATION OF THE UNITED STATES,
Bogota, December 19, 1887.

SIR: With reference to my notes of the 14th and 28th April and May 12 last, I have the honor to inclose a further communication * * * on the subject of my notes, which I beg your excellency will be good enough to return me when convenient.

I am again instructed to bring this highly important matter to the earnest consideration of your excellency's Government, not doubting that on reconsideration you will see the necessity of preventing any private company from asserting a monopoly over the telegraph across the isthmus.

If such a course were allowed, it will be a source of great trouble to all nations in the near future, and a resolution declaring that Colombia will permit no monopoly

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of telegraphs or other means of correspondence across the Isthmus will greatly gratify the Government of the United States, which looks with much disfavor upon the monopoly now exercised by the telegraph company owning the lines across the Isthmus of Panama, and can not permit its continued exercise.

I take this opportunity to renew, &c.

DABNEY H. MAURY.

Mr. Maury to Mr. Bayard.

[Extract.]

No. 70.] LEGATION OF THE UNITED STATES,
Bogota, December 25, 1887.

SIR: In reference to the subject of my letter to you, No. 67, December 19, instant, I have the honor to inform you that I laid the matter before the minister of foreign affairs, in a written communication of the points I raised against the claim of the Panama Railway Company to exclusive telegraphic rights on the Isthmus. He listened to us attentively, and replied that as the subject was new to him it would take a few days to familiarize himself with it, after which he would lay it before President Payan, and would let me know as soon as possible what action the Government would take in regard to it.

Last evening Señor Holguin, the minister of foreign affairs, kindly called at my residence and informed me that his Government had decided that the railway company held no exclusive telegraphic rights across the Isthmus, and further, that to avoid any possible conflict of private interests it had decided to construct and own the line, and that General Posada, governor of Panama, had been ordered to proceed at once with the work. This communication was verbal only, but as soon as I receive it in writing I shall forward you a copy.

I am, sir, &c.,

DABNEY H. MAURY.

Mr. Maury to Mr. Bayard.

No. 73.] LEGATION OF THE UNITED STATES,
Bogota, December 29, 1887.

SIR: I have the honor to transmit herewith a communication, received yesterday, from Señor Carlos Holguin, minister of foreign affairs, relating to the claim of the Panama Railway Company to the exclusive telegraphic rights across the Isthmus, with a translation of the same.

I have, &c.,

DABNEY H. MAURY.

[Inclosure in No. 73.—Translation.]

Mr. Holguin to Mr. Maury.

REPUBLIC OF COLOMBIA, MINISTRY OF FOREIGN AFFAIRS,
Bogota, December 28, 1887.

MR. MINISTER: I have the honor to acknowledge the receipt of your courteous note of the 19th instant and of the 14th and 28th of April and of the 12th of May last, all relating to the same subject, namely, the monopoly which is said to be claimed by the Panama Railway Company over the telegraphic line across the isthmus.

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The Government, availing itself of the right which it possesses, of constructing that class of public works within its on territory, has resolved to establish in (the department of) Panama a telegraph of a national character, of which your Government can have the use, with the utmost assurance that its communications will meet with no obstructions.

I believe, Mr. Minister, that this measure of the Government fully meets the wishes expressed in your note to which I have the honor to refer, and I suppose it is thus made clear to you that the Government does not recognize the monoply referred to.

I repeat, &c.,

CARLOS HOLGUIN.

Mr. Bayard to Mr. Maury.

DEPARTMENT OF STATE,
Washington, February 2, 1888.

No. 56.]

SIR: Your dispatches Nos. 67, 70, 72, and 73, dated respectively the 19th, 25th, 26th, and 29th of December last, have been received. They relate to your execution of my instruction No. 44, of November 14, 1887, touching open telegraphic communication across the Isthmus of Panama, which had theretofore been the subject of correspondence, and you therein report the decision of the Colombian Government that the telegraphic wire belonging to the Panama Railroad Company is a private wire, and not an exclusive monopoly of telegraphic transmission across the territory of the Isthmus. I observe, also, the announced purpose of the Colombian Government to construct and operate as a public work within the federal district of Panama a line of national telegraph, of which the unobstructed use is tendered to the Government of the United States.

The decision and announcement are received with satisfaction. The Government of the United States appreciates the action of the Colombian Government in placing at its disposal a means of untrammeled and secure telegraphic communication over so important a thoroughfare as the Isthmus, and sees therein a renewed indication of the spirit which animates the Government of Colombia in facilitating the observance of the important and intimate obligations which exist between it and the United States in respect of the Isthmian transit.

I am, &c.,

T. F. BAYARD.

Mr. Foster to Mr. Coughlin.

DEPARTMENT OF STATE,
Washington, December 22, 1892.

No. 323.]

SIR: After full consideration of your No. — of December 4th, conveying the information of the application of the Company of the Interoceanic Canal of Panama for an extension of its concession from the Colombian Government of one year, by direction of the President, I cabled you as follows:

DECEMBER 20, 1892.

Panama Canal concession. Asks suspension of action on application of extension of Panama Canal Company till views of this Government are received. Instruction goes by next mail.

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The peculiarly close and friendly relations between the Government of the United States and that of Colombia, cemented by the treaty of 1846, have subsisted unimpaired and have become more intimate by the lapse of time. The United States Government has ever been solicitous of the welfare and prosperity of its near neighbor, and in its zealous maintenance of its guaranty of the neutrality of the Isthmus has secured to the Colombian Government the peaceful and undisturbed possession of one of the most important and valuable strips of territory in the world.

In the organization and construction of the Panama Railroad Company, American energy and American capital have done much to develop the trade and augment the prosperity of Colombia, but in nothing more has this Government shown its friendship and interest in Colombian affairs than in its acquiescence in the concession of the Colombian Government to the Panama Canal Company of the right to construct a waterway between the Gulf and the ocean, which would have diverted trade almost entirely from the railway to the detriment of American enterprise and the loss of American capital.

This Government is equally mindful of the constant good will and friendship evinced by that of Colombia, and it is in relying on these, and on the mutual interests of both countries, that it represents the views with which it regards the granting of a further concession to the Panama Company to the consideration of the Government of Colombia.

The Panama Canal Company, as is universally known, is in a hopelessly bankrupt condition; it is in the hands of a liquidator appointed by the French courts; it is discredited in the eyes of the French people; its liabilities are enormous, and its assets, excepting the Panama Railroad Company, practically valueless. Even the most sanguine shareholders can scarcely hope for the completion of the canal, and well-informed people are convinced of the utter and irretrievable failure of this enterprise.

The application for an extension of the concession for one year, is not, therefore, a bona fide request, made with the expectation of completing the canal. Its object can only be to obtain what would constitute an additional asset to the company.

In view of this the United States Government earnestly trusts that no such extension will be granted without substantial guaranties from something more responsible than a canal company in liquidation. The existing condition of affairs would, in the event of the extension of the concession, be protracted, and the interests of the United States continue to suffer by the continued maintenance of the Panama Railroad Company in the hands of an insolvent foreign corporation.

The construction of this railroad was about coincident with the treaty of 1846; it was incorporated under the laws of the State of New York in 1848, under a grant from the Government of New Granada to three American citizens, such grant having been assigned to the railroad corporation. It was conceived by American enterprise and built by American capital, and was entirely controlled by citizens of the United States until some years ago the controlling interest passed to the Panama Canal Company, since which time it has been made entirely subservient to the interests of the canal company, although at least 1,500 shares still remain in American hands.

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The construction of this road following closely upon the treaty of 1846 was part of the general plan approved and sustained by the Government of the United States for the development of the Isthmus and the confirmation of what was practically a treaty of alliance between New Granada and the United States. It was supposed that the railroad company would always remain under American control and that no canal could be built except with the sanction of the railroad company, or, as provided by the contract in 1850 between the Colombian Government and the railroad company, except upon indemnification both to the railroad company and to the Colombian Government. The concession to Bonaparte Wyse and his associates, under which the canal was commenced, contained a similar provision.

To avoid the necessity of obtaining this consent, or to avoid the payment of the penality provided for, against which avoidance it is understood the Colombian Government has frequently protested, the promoters of the canal enterprise obtained and turned over to the canal company all but 1,500 shares of the stock of the railroad company.

The whole plan and purpose of the United States in giving more practical effect to the treaty of 1846, and in cementing their relations with Colombia, has thus been defeated, and will continue to be defeated if the control of the railroad does not revert to its original owners, the citizens of the United States. Had this contingency been contemplated, it is doubtful whether the United States would have acquiesced in the grant of the original concession.

That the control of the railroad will eventually revert to citizens of the United States, when the liquidation of the canal company shall have been wound up, can scarcely be doubted. The extension of the concession demanded simply protracts the final result without affording any legitimate hope of carrying out an enterprise now rendered impossible.

Aside from the general and important losses sustained by the United States Government, the disadvantages to its citizens, and the hindrance to the development of a policy equally beneficial to both Governments there is the specific loss inflicted on the owners of the 1,500 shares of the railroad company held in the United States. Under the conditions of the contract in 1850 between the Colombian Government and the railroad, they are entitled to their pro rata share of the indemnity due both to the Colombian Government and the railroad for the nonfulfillment of its conditions. The canal company, by subrogation in the contract, assumed this obligation, which it has never fulfilled.

There is no desire on the part of this Government to do any injustice to the people of France who have invested such large sums of money in the canal enterprise, and its long forbearance while there was any possibility of a successful issue forms a tangible evidence of the good will and friendship evinced. Now, however, that the enterprise is hopeless, the Government of the United States deems it due to itself and its citizens to remonstrate earnestly against any further extension of the concession formerly granted to the canal company.

You are instructed to read this dispatch to the minister of foreign affairs and convey to him, with the cordial assurance of the deep interest and friendship of the United States for Colombia, the extreme importance that this Government attaches to the subject of this instruction.

I am, &c., JOHN W. FOSTER.

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Mr. Foster to Mr. Abbott.

No. 333.] DEPARTMENT OF STATE,
Washington, February 8, 1893.

SIR: Mr. Coughlin's Nos. 435 and 438, of 22d December and 2d January last, respectively, in relation to the passage of the Colombian law looking to the extension or substitution of the Panama Canal concession, have been received.

The text of the law, as given in the latter dispatch, gives to the Government a wide discretion, either to extend under such conditions as it may deem equitable the term allowed for the organization of a new canal company and the resumption of the work "in an earnest and permanent manner," or, should the Government see fit not to avail itself of such authorization, to conclude a new contract, not subject to approval by the Colombian Congress. There is nothing in the latter clause limiting the Government to dealings with the collapsed French company; it is obviously free to contract, in its own good judgment, with any responsible parties who may appear able to execute the work.

The matter being thus abundantly within the discretion of the Government of Colombia, I feel the greater confidence in the efficacy of the representations made in my instruction No. 323, of December 22, 1892, which, I presume, has before now been communicated to the Colombian minister for foreign affairs, therein directed. You will lose no favorable opportunity to impress on the minister the importance we necessarily attach to the consideration of our expressed views of the matter, in the light of the intimate interest of this Government in its solution, and in consonance with the long existing relations between the United States and Colombia, and with their mutual obligations.

I am, &c.

JOHN W. FOSTER.

Mr. Abbott to Mr. Foster.

No. 459.] LEGATION OF THE UNITED STATES,
Bogota, February 22, 1893.

SIR: Upon my arrival in Bogotá I had the pleasure to receive a call from Mr. Mange, the agent of the liquidator of the Interoceanic Canal Company, who is here endeavoring to secure an extension of the existing contract with the Colombian Government. He was accompanied by the French chargé d'affaires, and the visit was purely formal, as was my return call.

I have had a long conversation with the acting President, at the suggestion of the minister of foreign affairs, relative to the desired extension. Bearing in mind the instructions contained in your No. 323 of December 22, 1892, which had been previously communicated to this Government by Dr. Coughlin, I did not fail to reiterate them as forcibly as possible. As I remarked to you in Washington before these instructions were sent, they did not seem to me to furnish any strong ground for active protest against an extension of the existing contract upon lines similar to the present arrangement. The Vice-President had evidently carefully studied your instructions with a

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view to satisfy the United States in its request, but he did not seem to consider the alleged bases therefor as sufficiently well founded to justify him in refusing a new extension for a year's time, if by such action decided advantages for Colombia could be obtained without sacrificing the rights of the United States.

It is proper to state that this Government, as at present constituted, is friendly to the treaty of 1846. It desires the continuance of the guaranty of the United States therein contained relative to the Isthmus and the interoceanic transit, and will not knowingly take any steps calculated to weaken our preponderance in that section. At the same time it desires the construction of the proposed Isthmian Canal, and will neglect no opportunity to forward that enterprise so far as it can do so consistently with the said treaty. The President in charge (as well as the titular President) is a strong and consistent friend of the United States and of the union of all American interests, and if they do not always agree with our Government in its expressed wishes upon mooted points, the difference is one of detail and not of principle.

Knowing this sentiment to be that of this Government, I was not surprised to hear the President say that he was extremely anxious to give a favorable response to our request that the existing canal contract might be at once terminated in the absence of proper guarantees of good faith and reliability. He said, however, that a dispute had arisen between this Government and the canal company concerning the property which would belong to Colombia upon the expiration of the contract; that he thought that the best and least tedious way to settle that question would be by conditions in an extension which should precisely define the rights of both parties in this respect; and that he also wanted to provide against the possible payment of the sum now claimed to be due from Colombia to the canal company. The President also hopes to secure an agreement that all disputed questions may be settled by Colombian rather than by French courts.

These seemed to be the chief advantages which he hoped to derive from the proposed extension. He said that no pains would be spared to maintain and preserve the rights of the United States, and in reply to my question he assured me that no guaranty on the part of any other nation than the United States would be admissible. He said that the French Government had instructed its minister here to urge, unofficially, the extension of the concession, by stating that the proposed new company would be responsible and able to fulfill its engagements. But he said that he should not allow the official interference of the French Government, and that he did not consider the company as French at all, but rather as a universal corporation. I told him that my Government would view with displeasure any attempt of the French Government to establish itself upon the Isthmus, and that any concession or extension of any existing concession looking in that direction would cause serious discussion. He replied that he felt as strongly upon that subject as does the United States, and that in case any such proposition should be made, as it had not then been, all pecuniary considerations would be laid aside as valueless and the extension upon such conditions absolutely refused.

He said that he had received no offers whatever from other parties for the construction of the canal, although the whole world knew that the present contract is about to expire. He did not therefore feel justified in refusing a new extension of one year, if by granting it he

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could gain the advantages sought and afford ground for hope that the work might be renewed. But he has no expectation that this action will result in the formation of any reliable company, and were it not for the indication above made he would be glad to put an immediate end to the whole affair.

I am satisfied from his conversation and from what I can see and hear that it is not the intention of Colombia to attempt to change the relative positions of the United States and France upon the Isthmus. If the concession be extended we shall simply stand for one year more where we have stood for several years past.

M. Mange, as yet, has no power of attorney to sign for the liquidator of the canal company, but I presume that such power will soon arrive.

I inclose a copy and translation of this Government's reply to your instruction No. 323 of December 22 last, and also the letter of transmittal. You will observe that the memorandum is confidential.

I also inclose a copy and translation of an article in the Porvenir from the pen of Dr. Núñez.

Permit me to suggest that the contents of this dispatch should not now be given out for publication.

I am, &c., JOHN T. ABBOTT.

[Inclosure No. 2. Translation of inclosure 1-459.]

MEMORANDUM RELATING TO THE NOTE OF DECEMBER 22, 1892, SENT BY THE GOVERNMENT OF THE UNITED STATES TO ITS LEGATION AT BOGOTA.

The Colombian Government recognizes the special friendship of the Government of the United States of America, in which friendship the treaty between the two countries, celebrated in 1846, has exercised an increasing influence. The care which the Government of Colombia displays in responding to so valued a friendship, is shown by articles 5 and 6 of the contract of 1878, for the excavation of the Panama Canal.

In those articles means were found duly to stipulate in favor of the nation which may guarantee the sovereignty of Colombia over the Isthmus and the neutrality of the transit for those political advantages which are proper and equitable. Even though the treaty of 1846 may be denounced at any time, the present Government of Colombia entertains the most favorable disposition in favor of its continuance and of the guaranty of neutrality established by that instrument.

The Panama Railroad was certainly built by citizens and capital of the United States of America, and it is also true that the Government of the said nation, influenced by just sentiments in favor of universal commerce and recognizing the sovereignty of Colombia, interposed no obstacle to the grant of the privilege to open the interoceanic canal, although this waterway, once opened, must be prejudicial to the railway.

In the contract of 1850, re-formed in 1867, relative to the privilege of constructing and operating the Panama Railroad, the contingency of the opening of a canal which might come to destroy the railroad or diminish its importance was foreseen. It was therefore provided that the railroad company at the time of granting permission to excavate the canal might demand an equitable indemnity, to be divided equally between it and the Government of Colombia.

There is no doubt that the provisions of the treaty of 1846 and those of the contract of 1867 sufficed to tranquilize the minds of all respecting the probability of the opening of a canal across the Isthmus of Panama. The freedom of commercial transit satisfied the Government at Washington, as it ought to satisfy it to-day, as it held and holds the power to guarantee the neutrality of interoceanic means of transit, a guaranty which, far from being a burden to it, is an advantage respecting other nations.

The good faith of the railroad company satisfied Colombia, and she fully trusted it not to grant permission to open the canal without demanding the indemnity for itself and for the Republic. And it was to be supposed that the Panama Railroad

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Company itself fully proposed to make use of the right which at the same time was its duty toward Colombia.

Notwithstanding, as soon as the canal company was constituted it and the railroad company found a way to negotiate for the permission and the corresponding indemnity, but to the prejudice of the rights of the Republic of Colombia. The method taken was to transfer, at a largely exaggerated price, the shares of the railroad, which were sold to the canal company, it being clear that the excess of price constituted the indemity obtained by the railroad stockholders and that the part belonging to Colombia was de facto acquired by them.

Some 1,500 shares having remained in the possession of citizens of the United States and more than 68,000 in that of the canal company, the former holders are in identical circumstances with Colombia respecting both the canal company and the railroad company; that is to say, they have not received the indemnity corresponding to the permission to open the canal. The North American holders, like the Colombian Government, can protest against the violation of their rights and employ the legal means to make them effective; but just as Colombia could not complain against them for not having proceeded against the canal and railroad companies, the United States shareholders can not demand of this Republic the fulfillment of any obligation in this respect.

Neither the Colombian Government nor that of the United States could prevent the shareholders of the latter nation from selling their Panama Railroad[1] and canal. The United States have the right of freedom of transit correlative to the guaranty of neutrality and will have the right to protect her citizens if justice be not done them in case they may demand indemnity for the transfer of the shares before a foreign tribunal. As to Colombia, her rights respecting the railroad and canal companies are not public, but private; that is to say, she can sue for such shares as she may deem just, the same as the individual holders in the United States who may believe themselves injured by these companies.

The preceding explanation elucidates the position of the Colombian Government in view of the application for a new extension of time for the excavation of the Panama Canal, an application presented by the liquidator of the company and an extension authorized by law 91 of 1892. Such extension does not impair the rights of the United States, which will be maintained intact respecting the canal and [in?] any other way whatever while the treaty of 1846 may be in force; nor the rights of the American shareholders who sold their railroad stock, receiving an indemnity in fact, though not in name, concerning which Colombia reserves its rights, as the holders who still preserve their shares can reserve theirs, nor the rights of these last, which are absolutely independent of the Colombian Government and foreign to it, and which the interested parties can make effective by attainable means.

It is also proper to make some statements concerning the advantage to Colombia, which is offered by the new extension of time for the excavation of the canal. These statements are simply made in order to respond to the friendly objections confidentially transmitted to the Government of Colombia by the minister of the United States in Bogota, especially to that part of the objection which refers to the matter of the conveniences of the negotiations with the liquidator of the Interoceanic Canal Company.

If this Republic does not grant the extension it will immediately enter into possession of the works, materials, and edifices of the canal, in conformity with the existing contracts. These articles may be of great value to this Republic, provided that they may be quickly sold; but if for any reason they should have to remain for any great length of time in the power of the Colombian Government, their deterioration would be very considerable and the cost of preservation very burdensome. On the same supposition it is possible that the credit of 4,000,000 francs which is owing to the canal company, according to the contract of 1863, might remain in force against Colombia, and this Republic would fail to obtain the 10,000,000 francs which the canal company is obliged to pay it if the work is recommenced. Moreover, it would be impossible to obtain other advantages which the extension would bring, e. g., those relating to the transit of salt and Colombian products by the Panama Railroad; the defining and the security of the rights of the Republic as to the cars, locomotives, and dredges which the company possesses upon the Isthmus, and the elucidation of other very important points relative to former contracts.

On the other hand, if the extension be granted it will be by virtue of the recognition of these advantages and the guarantees which the Government may deem equitable. If on account of the extension the company in liquidation shall be able to continue the enterprise, obtaining the organization of the new company, such result

[1] Stock, since the laws governing companies of that kind guarantee that right. In all relating to the Panama Railroad.

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ought not to be unpleasant either to the Colombian Government or to that of the United States, which have never been hostile to this great enterprise, and which, on the contrary, abound in friendly feelings toward the people of France. If the new extension shall prove inefficacious, Colombia will make sure of the possible advantages, will better its actual possession, and within a short time will be able to dispose of, as it can to-day, the works, materials, and buildings which the enterprise possesses, and which will be duly inventoried in case of a new contract. To sum up: The extension, given the circumstances of the company in liquidation, will probably have the same result as the approaching termination of the privilege, and, moreover, will yield various most valuable advantages for Colombia; and if by chance such extension should be efficacious, in no way would it prejudice the interests of the people and Government of the United States of America, whose observations are founded upon the supposed chimerical character which attaches to the organization of the other company.

The Colombian Government is convinced that that of the United States will accept these explanations, as frank as they are well founded, and that it will interpret exactly the motives and ends of the course of Colombia in this important affair—ends and motives entirely harmonious with the special friendship which this Republic cultivates with the Government and people of the United States of America.

BOGOTA, *February 18, 1893.*

[Inclosure 4 (translation of inclosure 3—459).]

[Private.]

FOREIGN OFFICE,
Bogota, February 18, 1893.

MY DEAR MR. ABBOTT: By instructions of Mr. Caro, I take the liberty to send you this confidential memorandum, which, in the opinion of the foreign office, elucidates, in a manner satisfactory to the United States the observations referring to the extension of the Panama Canal (contract).

Your friend and obedient servant,

MARCO F. SUÁREZ.

[Inclosure 6 (translation of inclosure 5—459).]

[From the Porvenir of February 2, 1893.]

The Hon. Mr. Abbott, minister of the United States, arrived at Barranquilla on the 28th of last month on his way to Bogota. He returns, as we understand, charged with the special duty of making certain propositions relative to the canal enterprise.

Up to this time the American Government has made no objection to the concessions of Colombia in favor of the said enterprise; and, far from having been hostile to the Panama Railroad, notwithstanding the clandestine purchase made by M. de Lesseps in 1881—when he cynically scoffed at our rights—we know, of our certain knowledge, that it intervened in a friendly way to prevent the Government of Colombia from submitting to the Supreme Court its just complaint and claim against a proceeding so illegal and discourteous.

To-day, if we are not misinformed, the American Government desires to come to an understanding with that of Colombia, not by invoking the Monroe doctrine, but upon reasons of international equity, to the end that the proposition of the canal company in liquidation, to cause the control of the interoceanic transit to be passed over to the French trans-Atlantic steamers, by means of arrangements with the railroad, may not be consummated by any act of our Government.

The truth is that the European lines in different directions are now making a great competition against the United States—even between Cuba, Vera Cruz, and New York, which is almost a domestic traffic. Their opposition to the interoceanic control of the French line by means of the railroad, which we have abov enoted, is not, then, an intemperate proceeding nor an abuse of power, but a simple act of defense of legitimate interests.

The guaranty of the neutrality of the Isthmus and of the sovereignty of Colombia does not indeed give to the United States unlimited rights; but it does place them in a favorable situation respecting the decisions of Colombia which may affect the isthmian transit and traffic.

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Since we have not cared to allow any European country—notwithstanding they have several times suggested it—to enter into a similar guaranty, it seems to us that there can be no just cause for complaint if Colombia allows herself to be influenced by the United States in cases where questions concerning the said traffic and transit are under discussion.

Mr. Abbott to Mr. Gresham.

No. 493.] LEGATION OF THE UNITED STATES,
Bogota, April 15, 1893.

SIR: I have the honor to report that the concession granted by this Government on March 23, 1878, for the construction of a canal across the Isthmus of Panama, which was extended on December 10, 1890, to February 28, 1893, has again been extended to October 31, 1894, by virtue of a contract signed upon the 4th instant.

I include as inclosure No. 1 the documents in the matter as published in the Government's official paper, to wit:

1. Mr. Mange's letter to the foreign minister, dated February 17, 1893, requesting a temporary extension for the purpose of discussing the bases of the proposed new contract.
2. The minister's reply, dated February 18, 1893, inclosing the decision of the Government to grant a temporary extension for the month of March.
3. Mr. Mange's letter to the foreign minister, dated March 28, 1893, requesting a second temporary extension to enable him to consult the liquidator in Paris.
4. The minister's reply, dated March 28, 1893, conceding the temporary extension desired.
5. A copy of the final contract of extension.
6. A copy Mr. Mange's power of attorney.
7. Mr. Mange's letter of April 4, 1893, informing the minister that the liquidator accepts by cable the provisions of the contract.

I include as inclosure No. 2 a translation of all the foregoing, down to and including the contract itself.

By Article II of the contract the grantee agrees to have the validity of the former and of the present contracts established in France. This can only be done by the courts, and must be accomplished before September next, or the contract will then expire by virtue of the final clause of Article VI.

The validity of the former contracts has often been disputed in France, and it is said to be claimed now that the present contract will be invalid by French law, because the liquidator is acting in excess of his powers.

The difficulties to be encountered by the liquidator in fulfilling this condition would seem to be serious, and it would not be a cause for surprise should he fail in the attempt.

By Article III the Republic receives the promise of 2,000,000 francs, in addition to the 10,000,000 provided for by the former contracts.

By Article IV Colombia gains the more substantial advantage of the present extinguishment of its debt of 4,000,000 francs to the canal company.

By Article V it is provided that 500,000 francs of the total amount to be received by Colombia are to be paid during the present year.

Article VI provides for the cases in which the contract shall determine.

Article VII provides for an inventory of the company's property

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upon the Isthmus, but unfortunately leaves open the old question as to what part of the same shall belong to the Government in case of the determination of the contract.

Article IX, submitting all disputes to the Colombian courts, and renouncing the right to have recourse to the diplomatic channel, except in the case of a denial of justice, is considered a very important gain by Colombia. It is somewhat difficult to see why, as the French courts are not thereby bound to refuse to take jurisdiction over matters affecting a French company, while the latter clause simply contains a statement of the international law as generally understood.

This clause occasioned much difficulty in the negotiations, and was the last one agreed upon.

As intimated in previous dispatches, there has never been any real doubt as to the result of the negotiations. The company sought one more chance and the Government desired to settle the questions of jurisdiction, the debt of 4,000,000 francs, the inventory, the validity of the contracts in France, and the class of property to belong to it in case of the termination of the contract. All these points have been gained, except the latter, so far as they can be gained by the agreement of the parties.

It is not generally believed that the result of this contract will differ from that of its predecessor; but so long as any hope at all exists this Government will always be ready to act in the direction of a canal across the Isthmus.

The French Government has taken no official action in the negotiations, as I am informed by the President. But the latter believes that the great zeal of the French minister at this capital in urging a favorable conclusion has been inspired by his Government. My own opinion is that the interest taken by the French Government in the success of Mr. Mange's mission is less than the President is inclined to suppose. At any rate the French influence upon the Isthmus is not increased by the provisions of this contract, but will remain as it has been since 1878.

I hope to be able soon to make a further report upon certain propositions made to this Government by other parties for the building of the canal, which may prove to be interesting. Up to this time I have been unable to secure the authentic papers relating to the matter, but believe that I shall have them at my disposal within a few days.

In conclusion, I will add that the Department's views, as embodied in previous instructions, have been repeatedly presented to this Government, but without avail. The time will never come, in my judgment, when this Government will refuse to grant canal concessions to European companies until a definite proposition for the construction of the work shall come from the Government or a reliable company of the United States. Any canal policy upon our part, which leaves out of consideration this fact and the absorbing interest which this Government and people entertain for the success of this enterprise, will fail as often as it shall be attempted.

I am, &c., JOHN T. ABBOTT.

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[Inclosure 2.—Translation of inclosure 1/493.]

[Diario official—Bogota, Wednesday, April 5, 1893—Foreign office.]

PANAMA CANAL—EXTENSION GRANTED TO THE COMPANY IN LIQUIDATION.

UNIVERSAL INTEROCEANIC CANAL COMPANY IN LIQUIDATION,
Bogota, February 17, 1893.

To His Excellency the MINISTER OF FOREIGN AFFAIRS, *Bogota:*

The short space of time which now separates us from the 28th of February, the date when the contract of December 10, 1890, must expire, renders it somewhat difficult to establish the bases of a new agreement, which I have the honor to seek from this Government in the name of the liquidator of the Interoceanic Canal Company.

For this reason, the force of which I submit to your excellency's consideration, I request that an extension be granted to continue during the necessary negotiations tending to the celebration of a last contract or extension.

I improve, &c.,

FRANÇOIS MANGE,
Attorney of Mr. Monchicourt.

REPUBLIC OF COLOMBIA, FOREIGN OFFICE,
Bogota, February 18, 1893.

To Mr. FRANÇOIS MANGE,
Attorney of the Liquidator of the Panama Canal Company, Bogota:

In answer to the memorial which you sent yesterday to this office, the following decision has been made:

"REPUBLIC OF COLOMBIA, NATIONAL EXECUTIVE DEPARTMENT,
"*Bogota, February 18, 1893.*

"In view of the memorial sent to the foreign office by Mr. François Mange, attorney of the liquidator of the Pamama Canal Company, in which a provisional extension is solicited, during which the bases of a new contract of extension for the organization of another company and for the continuation of the canal can be discussed with the care which the matter requires; and

"Considering:

"That law 91 of 1892 fully authorizes the Government of the Republic to extend, under conditions which it may deem equitable and advantageous, the term granted by the contract of 1890;

"That the law does not fix the duration of the new extension, the Government being able to concede such time as it may judge best under the circumstances;

"That although Mr. Mange arrived in this city some days since, it has not been possible to begin the discussion of the propositions which he has to present to the Government in his request for a new extension;

"It is resolved as follows:

"Mr. François Mange, attorney of the liquidator of the Panama Canal Company, is hereby granted an extension of one month, which shall commence to be reckoned from the 28th of the present month, during which to conclude the discussion which may be occasioned by the consideration of the extension treated of in law 91 of 1892.

"This provisional extension shall be considered as included in the principal extension, in case that the same be granted, so that the month of March next shall be computed in the time which may be conceded to the liquidator of the canal company for the organization of a new company and the continuation of the labors on the work.

"Communicate.

"M. A. CARO.

"The minister for foreign affairs.

"MARCO F. SUAREZ."

I have, &c.,

MARCO F. SUAREZ.

UNIVERSAL INTEROCEANIC CANAL COMPANY IN LIQUIDATION,
Bogota, March 28, 1893.

To His Excellency the MINISTER FOR FOREIGN AFFAIRS, *Bogota:*

Owing to the difficulties of telegraphic communication and to the short time at our disposal, I have the honor to request that your Government will be kind enough to

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grant an extension of fifteen days, reckoning from the 1st to the 15th of the next month, in order that I may be able to receive, without the possibility of a mistake, the instructions of the liquidator upon the points concerning which we do not agree and which have delayed the signature of the contract.

FRANÇOIS MANGE,
Attorney of Mr. Monchicourt.

REPUBLIC OF COLOMBIA, FOREIGN OFFICE,
Bogota, March 28, 1893.

Mr. FRANÇOIS MANGE,
Attorney of the Liquidator of the Panama Canal Company:

I have the honor to answer your polite note of this day, and to say that the Government has decided to grant to the liquidator of the canal company a new temporary extension for such number of days as may be necessarily required for you to receive instructions concerning the two points which now prevent the definitive conclusion of the contract.

* * * * * * *

With sentiments, &c.,

MARCO F. SUAREZ.

CONTRACT GRANTING AN EXTENSION TO THE PANAMA CANAL COMPANY IN LIQUIDATION.

Marco F. Suarez, minister for foreign affairs, duly authorized by His Excellency the Vice-President of the Republic, and by virtue of the authority granted to the executive power by law 91 of 1892, of the one part, to be hereafter designated as "the Government," and François Mange, engineer, director of the operations of the company in liquidation in the Isthmus, special agent of the liquidator of the Universal Panama Canal Company, by virtue of the power of attorney executed in Paris, January 24, 1893, of the other part, to be hereafter designated as "the grantee," have agreed to reform the contracts of March 23, 1878, and of December 10, 1890, for the opening of an interoceanic canal across Colombian territory, in accordance with the following stipulations:

ARTICLE I.

The extension of ten years granted by Article I of the contract of 1890 to the liquidator of the Universal Panama Canal Company shall remain in force, together with all the conditions therein stipulated, excepting the second, which is modified by extending to October 31, 1894, the term within which the new company must be organized and the works upon the canal recommenced in a real and permanent manner.

The term of the ten years shall begin to run from the day of the definitive organization of the new company.

ARTICLE II.

The grantee, or whoever may represent his rights, recognizes the validity of the former contracts and of the present contract and binds himself to cause to be performed in France all such acts as may be necessary to assure such validity. These acts shall be concluded, at the latest, on the 31st day of August next.

ARTICLE III.

As compensation for the extension which the Government concedes in Article I, and as an indemnity for the advantages lost thereby, the grantee, or whoever represents his rights, recognizes in favor of the Republic the sum of two millions of francs in gold (2,000,000 francs) which, added to the ten millions provided for in article 4 of the contract of 1890, constitutes a total credit of twelve millions of francs (12,000,000 francs) in favor of Colombia, without counting the five millions of francs (5,000,000 francs) in ten thousand shares, also provided for in the before-cited article.

ARTICLE IV.

The contracting parties, moreover, agree that from the 12,000,000 which have just been mentioned in the preceding article there shall be deducted the sum of four millions of francs, which the Colombian Government and the treasury of the department of Panama owe to the company in liquidation for the loan of 1883 and the

interest thereon, and for services rendered and materials furnished to the administration of said department from 1881 to 1892. In consequence, this debt is definitively extinguished, leaving the Republic free from every obligation in respect thereof, and reducing to eight millions of francs in gold (8,000,000 francs) the sum which the new company is to pay the Government.

Article V.

The eight millions of francs referred to in the preceding article shall be paid by the grantee or by whomsoever may represent his rights in the following manner: 150,000 francs, August 31, 1893; 150,000 francs, October 31, 1893; 200,000 francs, December 31, 1893.

The remainder shall be paid in four payments, with one year's time between each two payments, and as follows: The first payment shall be made three months after the new company for the conclusion of the canal may be definitively organized. The first of these payments shall be for one million five hundred thousand francs (1,500,000 francs) and the other three for two millions each (2,000,000 francs).

Article VI.

The Republic shall enter into the possession and ownership, without the necessity of any previous judicial decision and without the payment of any indemnity whatever, of the canal plant itself and of the appurtenances which belong thereto in accordance with the contracts of 1878 and 1890, upon the happening of any one of the following events:

If the new company be not organized within the term fixed by Article I of the present contract;

If the works be not renewed in the manner determined by the same article;

If the company in liquidation sell the property which is to belong to the Republic in case of the termination of the contract, or abandon its preservation, in conformity with the provisions of the former contracts, saving deterioration from use, the act of God, or unavoidable accident;

If the inventory named in Article VII of the present contract be not made; or

If the conditions of Article II of the same contract be not fulfilled.

Article VII.

There shall be made upon the Isthmus of Panama a general inventory of the property of the company in liquidation, which shall include without distinction as well the property which will become the property of the Government in case of the termination of this contract as that which will remain the property of the company in liquidation. It is understood that the rolling stock and dredges, scows, etc., shall be included in this inventory, which must be made in conjunction with the agent of the government of Panama, and shall be finished at the latest August 31, 1893.

Article VIII.

The bond of seven hundred and fifty thousand francs (750,000 francs), deposited in accordance with the contract of 1878 by the canal company, and confirmed by the contract of 1890, shall be preserved as a guaranty for the fulfillment of the obligations arising from the said contracts and of those entered into by the grantee under the present contract.

Article IX.

The differences which may arise between the contracting parties under the present contract or under the former contracts shall be submitted to the supreme judicial court of Colombia.

In accordance with the provisions of article 15 of law 145 of 1888, the grantee renounces the right to make any claim through the diplomatic channel relating to the duties and rights arising from the three contracts, except in the case of a denial of justice.

Article X.

All the rights and obligations resulting from the contract of March 23, 1878, and from the contract of December 10, 1890, for the construction of an interoceanic canal across Colombian territory, approved by law 28 of 1878, and by law 107 of 1890, shall subsist in full force and vigor, without other modifications than those stipulated in the present contract.

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ARTICLE XI.

The grantee declares that he accepts all the stipulations of the present contract which impose special obligations upon the liquidator, as well as those which affect the company which may be hereafter established.

ARTICLE XII.

The present contract, to be valid, must be approved by his excellency the Vice-President of the Republic.

Done in duplicate in Bogota the fourth day of April, one thousand eight hundred and ninety-three.

MARCO F. SUÁREZ.
FRANÇOIS MANGE.

EXECUTIVE DEPARTMENT,
Bogota, April 4, 1893.

Approved.
[L. S.] M. A. CARO.
The minister for foreign affairs.

MARCO F. SUÁREZ.

Mr. Rengifo to Mr. Sherman.

LEGATION OF COLOMBIA,
Washington, May 15, 1897.

Hon. Mr. SECRETARY: The statement published by the press of the United States relative to the negotiations that the Government which you so worthily represent has consummated with that of Nicaragua, with a view to preserving to the company of the canal which is to pass through the Republic in question the routes which its concession grants to it, and concerning the attitude of the American Congress, which is apparently favorable to supporting said company by a guaranty, on the part of the Government, of the bonds to be issued by it for the purpose of constructing that work, have induced the Government of Colombia to instruct me to make certain statements to you on the subject, which instructions I have the honor to obey by means of this note.

My Government thinks that it performs a friendly duty toward that of the United States by reminding it that the present new Panama Canal Company is a serious enterprise, in whose proper direction and success commercial corporations are interested which are of the highest respectability and influence and which possess ample resources, and that it has the means of again gaining public confidence through its own performances and not through the prestige of a name. The conviction of my Government with respect to the friendly duty which it performs in making its statements is still further strengthened by the consideration of the doubts, more or less well founded, which exist with regard to the practicability of the construction of the Nicaragua Canal, or with regard to its probable cost; for, when two commercial enterprises are concerned whose yield, it is to be hoped, will furnish a compensation for the pecuniary sacrifices which they render necessary, the economical aspect of the question arising is not be lost sight of, especially since it is a fact beyond all doubt that the present traffic and that which may be expected to be developed by two new interoceanic routes will not be sufficient to pay even an exceedingly low rate of interest on the capital invested therein.

The Government of Colombia understands that the United States

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Government yields, in its present attitude, to the universal necessity of facilitating commercial relations by the construction of a canal which, while reducing distances immensely, and ocean freights in proportion, shall meet the requirements of commerce between nations whose means of communication with each other are now very slow, and it has thought proper, being influenced, I repeat, by a friendly sentiment, to remind the United States Government that that interesting problem is in a fair way of being solved in the fullest and most definitive manner by the new Panama Company.

The close union between the Government of the United States of America and that of Colombia, which was so thoroughly sealed by the treaty of 1846, which conferred respective reciprocal rights and obligations upon the two countries as regards free traffic via the Isthsmus of Panama and the neutrality of that route, likewise influenced my Government when it decided to make the statement which this note contains, inasmuch as those reciprocal rights and obligations were considered by the Panama Canal Company when it granted that privilege, and very serious injury would be done to Colombia by the support of the Government of the United States of America lent to the Nicaragua Canal to the prejudice of that of Panama, since the present and future prosperity of one of Colombia's most important departments are dependent upon the construction of the latter canal.

I have the honor to inclose, separately, as a memorandum, a detailed and authorized report concerning the practicability of the Panama Canal, as its construction is now proposed, which work has already been done or is in preparation, and, finally, all that tends to enlighten the Government of the United States of America on the condition and prospects of the work.

I trust that these statements, which I respectfully submit to the consideration of the honorable Secretary of State, will be received in the spirit in which my Government makes them; that is to say, not as an unjustifiable interference in the policy and designs of that of the United States of America, or as an expression of complaint in regard to the attitude assumed by said Government in the matter, for which I have not been authorized, but as the frank and cordial information of a friendly Government which is actuated by the most sincere and fraternal sentiments toward that of the United States of America.

With sentiments of the most distinguished consideration, I have the honor again to sign myself, etc.,

JULIO RENGIFO,
Chargé d'Affaires ad Interim.

MEMORANDUM THAT THE CHARGÉ D'AFFAIRES AD INTERIM OF COLOMBIA PRESENTS TO THE HONORABLE SECRETARY OF STATE OF THE UNITED STATES OF AMERICA ON THE PANAMA CANAL QUESTION.

By the law No. 28 of May 18, 1878, the Congress of the United States of Colombia approved the contract for the opening of an interoceanic canal across the Colombian territory.

The concession for the construction and working of the maritime canal between the Atlantic and Pacific oceans was given to the Compagnie Universelle de Canal Interoceanique, organized under the general laws of France.

An International Congress was held in Paris in May, 1879, and decided that the best route for the construction of an international canal was by the Isthmus of Panama.

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Accordingly, the company aforesaid adopted the Panama route and decided to construct a sea-level canal.

For divers reasons the company failed financially in 1883, and a liquidator was appointed by the French courts to represent the interests of creditors and stockholders.

One of the first acts of the liquidator was to constitute an independent and impartial commission, composed of eminent engineers, to examine and report upon the character, extent, and importance of the work executed by the old company.

This commission found and reported that about 50,000,000 of cubic meters had been excavated; that 22 kilometers of the canal on the Atlantic side and 10 kilometers on the Pacific side has been practically completed; that on the whole length of the canal the cuttings were opened; that excellent ports and harbors existed at both ends of the canal and only required to be improved; that the work already executed represented an effective minimum value of $90,000,000; and, lastly, that the installations of all kinds and nature, including the building, machinery, and tools, existing upon the Isthmus were more than sufficient to completely finish the whole canal.

The works executed by the old company and reported as above by the commission have been thoroughly maintained and kept in good order and condition and are so at this time.

The said commission also reported that the completion of the canal was entirely practicable.

The Colombian Government verified those favorable conclusions. It also appreciated and judged in all equity the many important interests entitled to protection, and accordingly the Government gave, in 1890 and in 1893, two successive prolongations of the time for the completion of the canal under the said commissions.

When the difficulties into which the company had fallen were adjusted in 1894, a new company to complete the canal was organized under the general laws of France, and entitled "the Compagnie Nouvelle du Canal de Panama."

The said liquidator conveyed to the said new company all the assets of the old company.

This new company is entirely distinct from the old one. It has no political character. It took over the concession free from all entanglements of every kind. The most important financial corporations of France are large stockholders of the new company. The board is composed of ten directors, representing these financial institutions or other large interests, and none of the members of the present board were in the board of the old company.

In assuming its great trust the new company, with a most conservative board of directors, laid down unusually strict rules to govern its course and to determine with precision its design.

It resolved to submit afresh all technical and serious questions to thorough investigation, notwithstanding the use it was able to make of the result of previous and elaborate examinations.

The new company determined to abandon the plan of a sea-level canal, the realization of which at the present time seems impracticable, because only of financial and economic considerations, and not because of technical difficulties.

It has, therefore, adopted the plan of a canal with locks, as the plan required by existing circumstances and as one which will give full satisfaction to all the interests and requirements of commerce.

The essential question to solve in the construction of a canal with locks is the determination of the height of the divide; that is to say, as regards the Panama Canal, the depth to which the great cutting is to be made through the summits of Emperador and Culebra. There existed unknown and serious factors depending on the nature of the ground to be cut through. The work executed by the old company and the information derived from numerous borings made along the whole length of the cuttings were not sufficient to satisfy the new company as to the actual conditions that must be met.

Therefore, the new company conservatively resolved that upon this essential point it was the duty of the new company to acquire for itself, as well as for all who take interest in the undertaking, positive and absolute proofs that the conditions referred to (and which had at all times been recognized by engineers) could actually and satisfactorily be met. To this end it determined that it would at any cost of time and money establish with exactitude the depth which it is practicable to attain in the great cuttings of Emperador and Culebra, and also the time and expense thereto.

The company justly considered that the most convincing demonstration would be to actually complete the cutting upon a decisive section to be used in the line of the canal, and thus authoritatively and satisfactorily settle all questions of a technical and economic nature relating thereto. Accordingly, in 1893, the work upon the cutting was actually begun, and has been continued without interruption ever since.

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DEPARTMENT OF STATE,
Washington, May [illegible]

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JOHN SHERMAN

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The success of this work will be an unquestionable guaranty of complete success of the whole undertaking.

This is the immediate object of the company, and over 3,000 men are actually at work upon the cuttings referred to. The opening in the "big divide" is now cut down to the elevation of 65 meters above sea level; that is, 40 meters below the summit. The sides of the cutting have shown no indication of a disposition to slide. As the cutting gets deeper, the nature of the ground becomes harder and harder, requiring the use of explosives, and this is very encouraging and satisfactory, as it removes apprehension as to slidings.

It is thus unquestionably established that the cuttings may be made to any required depth.

From the works and investigations so far accomplished, it is already possible to state with confidence that at any time after the opening of the canal, the chain of locks may be suppressed and the canal transformed into a sea-level canal by changing the course of the Chagres River and sending its waters into the Pacific.

Regarding the secondary questions, such as those relating to the supply of water to the summit-level canal, the chain of locks, and the regulation of the floods of the Chagres River, complete investigations have been made by the new company, and for the same it has adopted practicable and satisfactory solutions.

It is calculated that the actual work of completion of the canal will not exceed six or seven years.

Mr. Sherman to Mr. Rengifo.

No. 37.] DEPARTMENT OF STATE,
Washington, May 21, 1897.

SIR: I have the honor to acknowledge the receipt of your note of the 15th instant, in which, by instruction of your Government, you inclose a memorandum setting forth the practicability of the construction of the Panama Canal, and proceed to point out the disadvantages of the construction of two canals connecting the Atlantic and Pacific.

Accept, sir, &c.,

JOHN SHERMAN.

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